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**Maritime Boundary Delimitation in the Arabian/Persian Gulf: A  
Study of Gulf State Practice in the light of International Law, with  
particular reference to the Continental Shelf.**

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**Thesis submitted for the degree of PhD**

**July 2016**

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## **Abstract**

The Arabian/Persian Gulf (“the Gulf”) is a small semi-enclosed sea surrounded by eight States, namely Iran, Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, the United Arab Emirates and Oman. The Gulf has long been an area of strategic and economic importance, rich in subsea hydrocarbon resources. Following a general introduction to the international law of the sea, this study analyses two forms of Gulf State practice; firstly, national legislation to date dealing with maritime limits and delimitation and secondly, the bilateral continental shelf agreements between the Gulf States, the majority of which delimit the continental shelf boundary between them. This analysis then assesses such state practice in the light of international law, with a particular focus on continental shelf delimitation. In so doing, this study places Gulf State practice in the context of the Geneva Convention on the Continental Shelf 1958, the Geneva Convention on the Territorial Sea and Contiguous Zone 1958 and the Law of the Sea Convention 1982, as well as customary international law and international case law.

This study reaches a number of conclusions in respect of delimitation in the Gulf more generally, but mainly in respect of continental shelf boundary delimitation in the Gulf, and how this compares with the international law of the sea. It notes the early references in Gulf legislation to delimitation on the basis of equitable principles, which were gradually superseded by references to the equidistance line. The reliance on equidistance as a method of delimitation, albeit often heavily modified, in the bilateral maritime boundary agreements is examined. The conclusions then seek to present such features of Gulf State practice in the context of the international law of the sea, noting innovative aspects of delimitation in the Gulf, as well as the relevance of international law to a small but extremely significant region of the world.

*To my Mother Nadia Iskander and my Father Nabil Helmi Iskander*



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Hala Helmi

London

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## **Abbreviations**

CSC 1958	Geneva Convention on the Continental Shelf 1958
EEZ	Exclusive Economic Zone
EFZ	Exclusive Fishing Zone
ILC	International Law Commission
ITLOS	International Tribunal for the Law of the Sea
<i>LOS</i>	Law of the Sea Bulletin
LOSC 1982	United Nations Convention on the Law of the Sea 1982
TSCZ 1958	Geneva Convention on the Territorial Sea and Contiguous Zone 1958
UAE	United Arab Emirates
UN	United Nations
US	United States of America
UNCLOS I	The First United Nations Conference on the Law of the Sea
UNCLOS II	The Second United Nations Conference on the Law of the Sea
UNCLOS III	The Third United Nations Conference on the Law of the Sea
U.N. Leg. Ser.	United Nations Legislative Series

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*Anglo-Norwegian Fisheries*, Judgment, [1951] ICJ Rep 116

*Asylum Case (Colombia v Peru)* [1950] ICJ Rep 266.

*Barbados/Trinidad and Tobago Arbitration* (2007) 27 RIAA 147

*Bay of Bengal Maritime Boundary Delimitation (Bangladesh/India) Arbitration* (2014) PCA Case 2010-16

*Case concerning Right of Passage over Indian Territory (Portugal v India) (Merits)* [1960] ICJ Rep 6

*Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, [1985] ICJ Rep 13

*Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, [1982] ICJ Rep 18

*Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, (2012) ITLOS Case No. 16

*Delimitation of the Maritime Boundary in the Gulf of Maine Area*, Judgment, [1984] ICJ Rep 246

*Dubai/Sharjah Border Arbitration* (1981) 91 ILR 543

*Eritrea/Yemen Arbitration, Second Phase, (Maritime Delimitation)* (1999), (2001) 22 RIAA 333

*Franco-Canadian Maritime Boundary Arbitration (St. Pierre and Miquelon)* (1992) 31 ILM 1145

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*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening)*, Judgment, [2002] ICJ Rep 303

*Lotus case* P.C.I.J., Series A, No. 10, 1927

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*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States (Merits))* [1986] ICJ Rep 14

*Petroleum Development Ltd v Sheikh of Abu Dhabi* (1951) 18 ILR 144

*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras)*, Judgment, [2007] ICJ Rep 659

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Act of 18 June 1955 on the Exploration and Exploitation of the Natural Resources of the Continental Shelf of Iran

Act of 12 April 1959 amending the Act of 15 July 1934 on the Territorial Waters and the Contiguous Zone of Iran

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Decree Regarding the Delimitation of the Breadth of the Territorial Sea of the State of Kuwait on 17 December 1967

Decree No. (317) Concerning the Delimitation of the Marine Areas Pertaining to the State of Kuwait, as amended, 29 October 2014

## **OMAN**

Royal Decree of 17 July 1972 concerning the Territorial Sea, Continental Shelf and Exclusive Fishing Zones of the Sultanate of Oman

Royal Decree No. 44 of 15 June 1977

Royal Decree concerning the Territorial Sea, Continental Shelf and Exclusive Economic Zone of 10 February 1981

Notice relating to the application of the straight baselines system for the demarcation of baselines for the territorial sea, the internal waters and the enclosed waters of 1 June 1982

## **QATAR**

Proclamation regarding subsoil and seabed area of 8 June 1949

Declaration by the Ministry of Foreign Affairs of 2 June 1974

Decree No.40 of 1992 defining the Breadth of the Territorial Sea and Contiguous Zone of the State of Qatar of 16 April 1992

## **SAUDI ARABIA**

Customs Law of 29 June 1930

Decree No. 6/4/5/3711 of 28 May 1949

Royal Proclamation of 28 May 1949

Royal Decree concerning the Territorial Waters of the Kingdom of Saudi Arabia (Royal Decree No.33) of 16 February 1958

Declaration concerning the Limits of the Exclusive Fishing Zones of Saudi Arabia in the Red Sea and the Arabian Gulf 1974

Council of Ministers' Resolution No. (15) of 25 January 2010

Statute of Maritime Delimitation of the Kingdom of Saudi Arabia of 13 December 2012

## **UNITED ARAB EMIRATES**

Declaration of the Ministry of Foreign Affairs concerning the Exclusive Economic Zone and its delimitation of 25 July 1980

Federal Law No. 19 of 1993 on Determination of the off-shore territories of the United Arab Emirates

Council of Ministers' Decision No. (5) 2009 in respect of the Application of the Straight Baselines System to a Part of the Coast of the United Arab Emirates of 14 January 2009

**ABU DHABI**

Proclamation regarding subsoil and seabed area of 10 June 1949

**AJMAN**

Proclamation regarding subsoil and seabed area of 20 June 1949

**DUBAI**

Proclamation regarding subsoil and seabed area of 14 June 1949

**FUJAIRAH**

Proclamation regarding subsoil and seabed area

**RAS AL KHAIMAH**

Proclamation regarding subsoil and seabed area of 17 June 1949

**SHARJAH**

Proclamation regarding subsoil and seabed area of 16 June 1949

Decree concerning the Territorial Waters of Sharjah Emirate and its Dependencies and Islands of 10 September 1969

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# **Chapter 1**

## **Introduction**

### **Research questions**

The aim of this thesis is to examine the law and state practice of delimitation of maritime boundaries in the Arabian/Persian Gulf (“the Gulf”) within the context of public international law (henceforth referred to as “international law”) with a particular focus upon delimitation of the continental shelf.<sup>1</sup> Following a systematic examination of the national legislation of Gulf States, their agreed maritime boundaries, and the basis upon which solutions to delimitation problems have been reached, this thesis will consider whether the particularly unique geographical features of the Gulf region, including its wealth of natural resources, have influenced or dictated developments in the law and state practice in the region. In addition, this thesis will examine whether trends in Gulf state practice may be identified and if so, whether they are consistent with international law, or whether there are aspects showing innovation when compared with international law.

### **Data to be analysed**

The primary sources of the data to be examined are the sources of the international law of the sea, and specifically state practice in the Gulf regarding continental shelf boundaries. The main international law sources are contained in Treaties, such as the Geneva Convention on the Territorial Sea and Contiguous Zone (“the TSCZ 1958”),

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<sup>1</sup> The particular considerations surrounding the nomenclature of the geographical area which is the subject of this study are briefly dealt with later in this chapter. However, in this study the term “Gulf” is used to refer to the area in question. The terms “Persian Gulf” and “Arabian Gulf” will not be used unless quoting directly from a source which uses those terms.

the Geneva Convention on the Continental Shelf 1958 (“the CSC 1958”) and the United Nations Convention on the Law of the Sea 1982 (“the LOSC 1982”), in customary law, and in the jurisprudence of the International Court of Justice (“ICJ”), as well as the case law of other international arbitral tribunals.<sup>2</sup>

With regard to state practice in the Gulf, the main sources to be examined will be national laws, bilateral state agreements on maritime boundary delimitation, the adjudicated boundaries in the Gulf, and state pronouncements on law and policy. Both Gulf legislation and bilateral delimitation agreements constitute state practice, in the sense that they are the acts, both legislative and compromissory, of Gulf States. Such acts may potentially be relevant for the purpose of establishing whether a particular rule of customary international law exists, providing that the necessary criteria for establishing a customary international law rule are met.<sup>3</sup> Bilateral agreements will feature heavily in this study. They are a key source of law applicable between the state parties in question, and their significance also rests upon their capacity for applying international law norms. Moreover, they may, if particular criteria are met, contribute to the formation of customary international law. However, it is also significant that they are negotiated compromises, and are directed at individual delimitation issues governing two particular states.

It should also be mentioned that excluded from the ambit of this thesis is the topic of the right of innocent passage through the territorial sea.<sup>4</sup> This is on the basis that it is strictly outside the confines of the field of maritime boundary delimitation. However, as a topic, it has particular significance for the Gulf States, in a number of ways, for example, and quite significantly, in relation to passage through the Strait of Hormuz which is mostly comprised of the territorial seas of Iran and Oman.<sup>5</sup>

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<sup>2</sup> The First United Nations Conference culminated in four Geneva Conventions and a Protocol of 1958. Two of these have already been referred to, namely the TSCZ 1958 and the CSC 1958. The others, which are not of direct relevance to this study, are the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes.

<sup>3</sup> The elements of customary international law, namely state practice and *opinio juris*, are dealt with in Chapter 2.

<sup>4</sup> What constitutes innocent passage was contained in Article 14(4) and (5) TSCZ 1958, and is contained in Article 19 LOSC 1982.

<sup>5</sup> While it is not the intention of this thesis to examine the right of innocent passage, this issue has exercised the Gulf States. Concerns about it in light of perceived threats from Israel were the main reasons why Iran and Saudi Arabia did not ratify TSCZ 1958, and, for example, Iran’s declaration of understanding on signing LOSC 1982 expressed concerns regarding the meaning of innocent passage

Although the focus of this thesis is the delimitation of the continental shelf in the Gulf, and the relationship between it and international law, this thesis will also examine Gulf State practice in respect of the delimitation of other maritime zones, with the aim that a wider examination of the relationship with international law will shed more light on the examination of Gulf continental shelf delimitation in the context of international law.

### **Background to the nomenclature of the Gulf**

The issue of the nomenclature of the Gulf region has been heavily characterised by debate and controversy. Historically, the name attributed to it has depended on whether Arab or Persian interests prevailed in the trade routes in the region, so that, for example, during the Baghdad-based Abbasid era during the eighth to the thirteenth centuries, it was known as the Arabian Gulf.<sup>6</sup> However, when Persian interests dominated, it was called the Persian Gulf, such as during the Sassanian era 227-627 AD, or when the British Political Resident in the Gulf took Bushire on the Iranian coast as a base for operations in the region, due to the strong relationship between Persia and Britain, in the late nineteenth and early twentieth centuries.<sup>7</sup> While historically, traditionally, and internationally, the term “Persian Gulf” has been used to apply to the region, it is highly arguable that the most lasting and dominating influence on the Gulf has been Arab. In relatively recent years, essentially since the 1960s, Arab States have used the term “Arabian Gulf” with increased emphasis.<sup>8</sup> In addition, many Arab States have passed laws stipulating that

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in LOSC 1982. By way of further example of the issues created by the concept of innocent passage, objections have been made by the US and Germany on behalf of the EU, to Articles 5-9 of Iran’s Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea 1993 in respect of curtailments of innocent passage. The US’s protest of 11 January 1994 and Germany’s démarche of 14 December 1994 are at 25 *LOS* (1994), pp. 101-3 and 30 *LOS* (1996), p. 60 respectively. Iran replied on to the US protest on 24 May 1994, at 26 *LOS* (1994), pp. 35-8. Gulf States have also protested against the provisions of Iran’s 1993 Act, which they have viewed as restricting the right of innocent passage, see Qatar, Saudi Arabia and the UAE at 32 *LOS* (1996) 89-91. For a discussion of Iran’s 1993 Act, see Chapters 4 and 5 of this thesis.

<sup>6</sup> A. Anani and K. Whittingham, *The Early History of the Gulf Arabs* (Longman, Essex, 1986), 8-9.

<sup>7</sup> *Ibid.*, p. 9.

<sup>8</sup> H.M. Al-Baharna, who published the second edition of his work *The Arabian Gulf States. Their Legal and Political Status and their International Problems* in 1975, stated that in the decade or so prior to that publication there had begun an identifiable trend among Arab States towards the term

it is compulsory to use the term “Arabian Gulf” when communicating on an international level.<sup>9</sup> The alternative of “Islamic Gulf” received limited support in the late 1970s and early 1980s, but was never viewed as a real alternative among Arab States.<sup>10</sup>

This study does not propose to deal with the controversies in any detail.<sup>11</sup> However, it does proceed on the premise that, while the term “Persian Gulf” is one which is intrinsically bound up with history, in the light of more modern developments, it no longer reflects the widespread usage by the Arab Gulf States, as well as by other Arab States in the Middle East. Therefore, this study proposes to use the term “Gulf” to refer to the geographical area which is the subject of the study.

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“Arabian Gulf”, a trend opposed by Iran, (2<sup>nd</sup> ed., Librairie Du Liban, Beirut, 1975, reprinted 1978), p. 1, n. 1.

<sup>9</sup> *Ibid.*, p.1, n.1.

<sup>10</sup> The name “Islamic Gulf” is first attributed to Sadiq Khalkhali, who was Iranian Chief Justice of the Islamic Revolutionary Courts in 1979-81, and a Member of the Iranian Parliament in 1981-88, during a visit to the UAE in 1979. It has since been used by a number of Iranian Revolutionaries. Libya’s Colonel M. Gaddafi also expressed support for such a name in an Arab Summit in Benghazi on 18 September 1981 as an alternative to “Arabian Gulf” or “Persian Gulf”. See S.H. Amin, *Legal System of Kuwait* (Royston Publishers, Glasgow, 1991), Appdx 1, p. 283.

<sup>11</sup> The controversy, which remains entrenched amongst the Gulf States, continues until present times. For example, in a communication dated 22 December 2010 from the Permanent Representative of Iran to the Secretary-General of the U.N., Iran objected against the use of “Arabian Gulf” in legislation regarding straight baselines promulgated by Saudi Arabia in January 2010. Iran noted “with regret the use of a fake name for the *Persian Gulf*, inventing or using any name other than the *Persian Gulf* which is the only and true geographical designation, as historically established and universally recognized, for the sea area between Iran and the Arabian Peninsula would only create confusion and misunderstanding, and is therefore rejected and void of any legal significance.” For Iran’s communication see (2011) 75 *LOS* 33. The Saudi Arabian legislation in question was the Council of Ministers Resolution No. 15 of 25 January 2010 and Royal Decree No. M/4 of 26 January 2010 at (2010) 72 *LOS* 81-5 and is referred to in Chapter 4 of this thesis.

## **Geographical background**

Figure 1 shows a map of the Gulf, which is a semi-enclosed sea.<sup>12</sup> In categorising the Gulf as a semi-enclosed sea, Alexander has suggested that the criteria for such a categorisation are an area of at least 50,000 square nautical miles.<sup>13</sup> He also suggests that the sea should be a “primary” sea rather than merely:

an arm of a larger semi-enclosed water body. At least 50 percent of its circumference should be occupied by land and the width of the connector between the sea and the open ocean must not represent more than 20 percent of the sea’s total circumference.<sup>14</sup>

Alexander also confirms that the Gulf’s area is 70,000 square nautical miles and 97 percent of the periphery is occupied by land.<sup>15</sup>

The Gulf Sea is encompassed by the eight States of Oman, the United Arab Emirates (“the UAE”), Qatar, Bahrain, Saudi Arabia, Kuwait, Iraq, and Iran, which this study will collectively refer to as “the Gulf States”. A major significance lies in the fact that relatively speaking, a large number of States surround a very small area of sea. The entrance to the Gulf from the Indian Ocean is through only one route, namely the Strait of Hormuz, which, as a result, has a particular strategic and economic importance. In the Strait of Hormuz, the deeper waters are located in Oman’s territorial sea, which therefore is the location of all the heavy maritime Gulf

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<sup>12</sup> It falls within the definition of such in Article 122 Law of the Sea Convention (“LOSC”) 1982 which provides that an “enclosed or semi-enclosed sea” is “a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.”

<sup>13</sup> An important point to note is the unit used to measure nautical distance. LOSC 1982 expresses such measurement in nautical miles (referred to in this study as “nm”). According to Kapoor, D.C., and Kerr, A.J., *A Guide to Maritime Boundary Delimitation* (Carswell, Toronto, 1986), while the 1982 Convention does not define what constitutes a nautical mile, “[t]he value of 1,852 metres was approved for the “international nautical mile” by the International Hydrographic Conference of 1929. This standard has since been adopted by most maritime States as well as by the International Bureau of Weights and Measures’ (p. 21). By way of comparison, the statute mile, the unit of measurement known, for example, in the UK, is 1,609.344 metres.

<sup>14</sup> See L.M. Alexander, “Regionalism and the Law of the Sea: The Case of Semi-enclosed Seas” (1974) 2 *ODIL* 151, at p. 155.

<sup>15</sup> Alexander (1974), Table 1, p. 158. As this study will highlight in due course, due to dimensions of the Gulf, the Gulf States are unable to claim a continental shelf or an Exclusive Economic Zone (“EEZ”) to a distance of 200nm from the baselines as stipulated in provisions in LOSC 1982.

traffic, including that which involves the transport of most of the oil produced in the Gulf States.

The length of the Gulf, including the Strait of Hormuz, is approximately 430nm.<sup>16</sup> Iran has the longest coastline along the Gulf, while at 10nm, Iraq has the shortest.<sup>17</sup> The maximum width of the Gulf is approximately 160nm between Iran and the UAE<sup>18</sup> Oman's Musandam Peninsula in the Strait of Hormuz is less than 50 miles from the coast of Iran.<sup>19</sup> The Gulf Sea is extremely shallow, with depths rarely exceeding 100 metres.<sup>21</sup> There are two crucially important characteristics of the geography of the Gulf relevant to this study. Firstly, there is a proliferation of islands, and given the important political and legal consequences attached to their ownership, a number of them are subject to disputes as to which Gulf State has sovereignty over them. Secondly, there are a number of offshore oil and gas deposits scattered throughout the Gulf Sea which again have political and legal consequences attached to their ownership. Such characteristics, and their significance within the wider context of this study's hypothetical and research questions, will be a focus of this research.

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<sup>16</sup> R. Young, 'The Law of the Sea in the Persian Gulf: Problems and Progress', in R. Churchill, K.R. Simmonds and J. Welch (eds.), *New Directions in the Law of the Sea*, Vol III, (Oceana Publications Inc, New York, 1973) 231, at p. 231.

<sup>17</sup> A. Razavi, *Continental Shelf Delimitation and Related Maritime Issues in the Persian Gulf* (Martinus Nijhoff Publishers, The Hague, 1997), p.6.

<sup>18</sup> *Ibid.*, p. 6.

<sup>19</sup> E.R. Peterson, *The Gulf Cooperation Council* (Westview Press, Boulder and London, 1988), p.8 where he refers to "miles" rather than "nautical miles".

<sup>21</sup> G. Blake, *Maritime Aspects of Arabian Geopolitics* (Arab Research Centre, Research Paper Series, Arab Papers, No.11, September 1982), p.6.

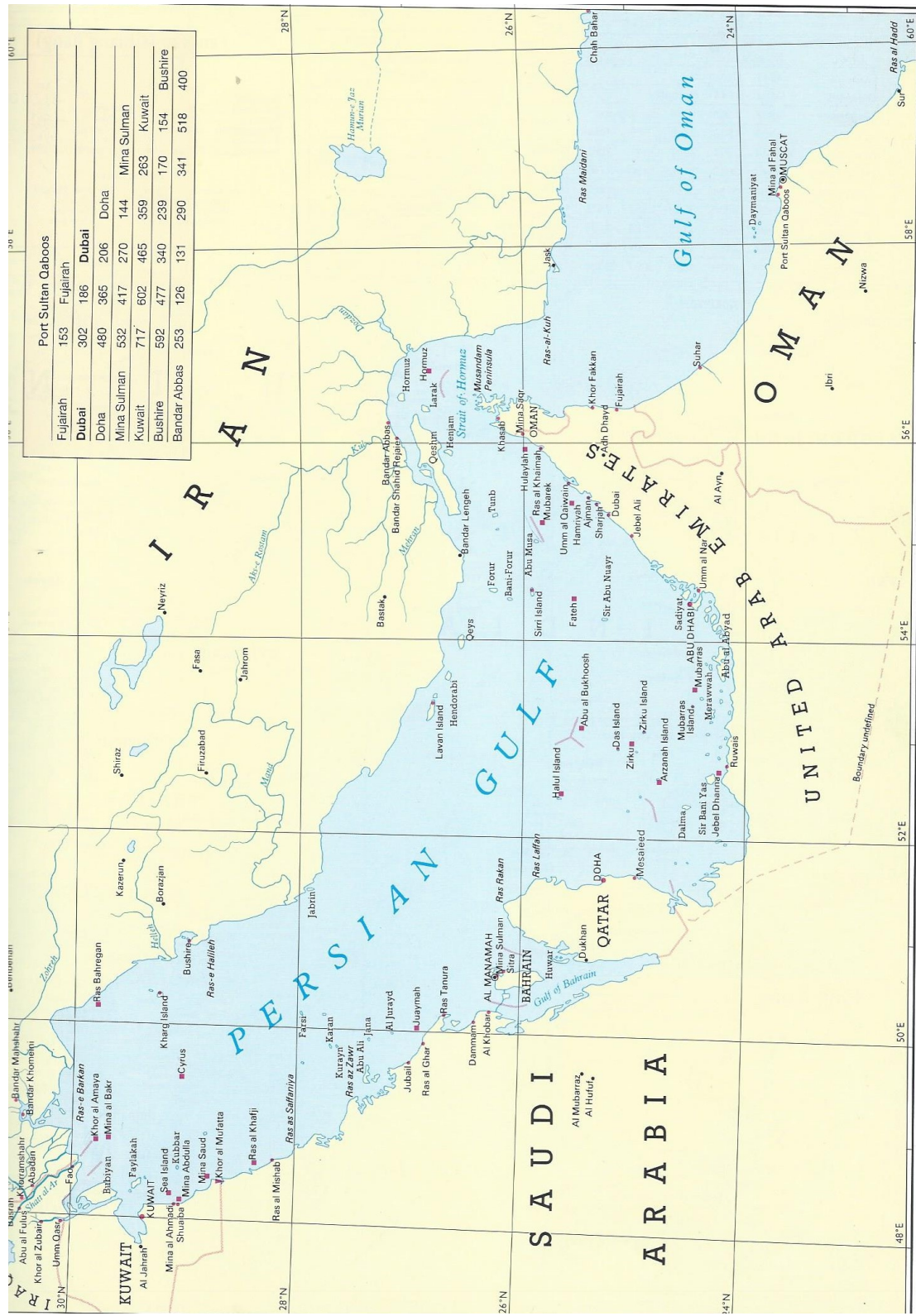


Figure 1: Map of the Gulf, from *Lloyd's Maritime Atlas of World Ports and Shipping Places* (18<sup>th</sup> ed., Lloyd's of London Press Ltd., Essex, 1995), p. 37.



## **Historical background**

The Gulf has a rich history of seafaring prowess with the Arabs of the Gulf formerly gaining power and influence as a result of maritime trading activity. Arabs dominated trade in the Indian Ocean when the Greeks first began maritime activity around the Arabian Peninsula and East Africa, following Alexander the Great's conquests at the end of the fourth century B.C.<sup>22</sup> The Arabian tradition of seafaring continued until Islamic times and was strengthened during the expanding Islamic Empire, assisted by Arab advancement in the sciences of navigation and astronomy.<sup>23</sup>

Arab maritime power began to decline with the gradual rise of the Ottoman Empire in the fourteenth century. Not only did the growing Ottoman Empire thus affect the balance of power in the region, but so did the development of European maritime power and consequent colonial expansion, beginning in the sixteenth century. The Gulf first gained the attention of Europe as a result of Portuguese attempts in the sixteenth century to control trade between Asia and Europe by supplanting the Arabs as middle-men in that trade.<sup>24</sup> During the Portuguese struggle with the Ottoman Empire, Portuguese power increased, and in 1515 they had taken control of Hormuz and in 1588 had built a fortress at Muscat. In 1600 the Portuguese were still the only Europeans present in the Gulf, with fortified stations on the islands of Hormuz (which was the site of their administrative centre), Bahrain, Qishm, Muscat and probably other places in Oman.<sup>25</sup> However, the British appeared in the Gulf in the early seventeenth century, and together with the Persians, had expelled the Portuguese from Hormuz by 1622.<sup>26</sup> Other European powers which pursued their own territorial claims in the region included the Dutch, Spanish and French. Such activity confirmed how strategically important it was to control the Gulf for the purpose of protection of trade routes between Europe and Asia.

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<sup>22</sup> R. Price, *Maritime Laws of the Arabian Gulf Cooperation States* Vol. II (Graham and Trotman, London, 1986), p. 7.

<sup>23</sup> See S. Kay, *Seafarers of the Gulf* (Motivate Publishing, Dubai, 1992), pp. 22-27; More generally, see A.M. Fahmy, *Muslim Sea-Power in the Eastern Mediterranean From the Seventh to the Tenth Century A.D.* (1<sup>st</sup> ed., National Publication & Printing House, Cairo, 1966).

<sup>24</sup> J.G. Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia*, Vols. 1-4 and Appendix (Official Publication of the Government of India, Calcutta, 1908-1915), Vol. 1, p.1.

<sup>25</sup> *Ibid.*, p. 9.

<sup>26</sup> *Ibid.*, pp. 21-25.

The British influence in the Gulf region strengthened in the eighteenth century, primarily as a result of the need to control the trade route between Europe and India.<sup>27</sup> However, the region was beset by the piracy of Arab tribes. British desire to maintain maritime order led to the “General Treaty with the Arab Shaikhs for the Cessation of Plunder and Piracy by Land and by Sea” in 1820 between Britain and Arab tribes in the Gulf, including the Sheikhs of Ras al-Khaimah, Sharjah, Umm al Qaywayn, Ajman and Fujairah. Bahrain also became a party to the treaty in due course.<sup>28</sup> However, the Arabs continued to engage in maritime warfare, and the need for security led to a proliferation of truces between Britain and individual Gulf Arab Sheikhs as a result of the former’s desire to control the region. In 1853 the Perpetual Maritime Truce was signed, giving rise to the term “Trucial States” to describe those who had signed.<sup>29</sup>

With the designs of the Ottoman Empire, Russia and Germany upon the Gulf as a pervasive threat, “protection” was offered by Britain in return for it obtaining the agreement of Sheikhs to abstain from maritime aggression, and this strengthened its ties in the region.<sup>30</sup> While the Shaikh of Bahrain had signed the General Treaty of Peace in 1821, Bahrain did not formally become part of the “Trucial system” until 1861, when it undertook to cease all maritime aggression in return for Britain’s protection from any maritime attack.<sup>31</sup> The 1861 agreement was re-negotiated in 1880, to include Bahrain’s agreement not to negotiate or sign a treaty with any nation or entity other than Britain.<sup>32</sup> Similar treaties were signed with the Trucial States (1887) and Oman (1891).<sup>33</sup> In 1892, the agreements with Bahrain and the Trucial States were re-negotiated to increase Britain’s influence.<sup>34</sup> The agreement with the

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<sup>27</sup> British control in the region from the eighteenth century onwards is comprehensively dealt with by J.B. Kelly *Britain and the Persian Gulf (1795-1880)* (Clarendon Press, Oxford, 1968) and B.C. Busch, *Britain and the Persian Gulf 1894-1914* (University of California Press, Berkeley and Los Angeles, 1967).

<sup>28</sup> See Kelly (1968) pp. 155-165; R.S., Zahlan, *The Making of the Modern Gulf States. Kuwait, Bahrain, Qatar, the United Arab Emirates and Oman* (Ithaca Press, Reading, 1998), p. 14.

<sup>29</sup> J. Bulloch, *The Gulf. A Portrait of Kuwait, Qatar, Bahrain and the UAE* (Century Publishing, London, 1984), p. 180; Zahlan (1998), p. 14. The Trucial States came to include a number of sheikhdoms in the Gulf, including the Emirates which now constitute the UAE

<sup>30</sup> The following brief survey does not attempt to discuss the legal status of the Gulf States or their characteristics as protectorates in any legal or detailed sense.

<sup>31</sup> Zahlan (1998), p. 15.

<sup>32</sup> E.R. Peterson, *The Gulf Cooperation Council* (Westview Press, Boulder and London, 1988), p. 17; Zahlan (1998), p. 15.

<sup>33</sup> Peterson (1988), p.17.

<sup>34</sup> *Ibid.*, p. 17.

Trucial States ensured that the sheikhs would not dispose of any territory except to Britain, and would not enter into relations with any other foreign government without Britain's consent. This agreement was similar to other treaties between Britain and other Gulf States. In 1899 a similar treaty was signed between Britain and Kuwait, recognizing the latter as an independent State under British protection, and providing that Kuwait would not in any way dispose of its territory to any nation other than Britain, or enter into any foreign relations with any nation other than Britain without the latter's consent. A Treaty was signed with Qatar in 1916, so that it also joined the system of treaties with Britain.<sup>35</sup> Thus Britain controlled these states' foreign and defence policies. Saudi Arabia was never part of these arrangements, with modern Saudi Arabia being established as a Kingdom in 1932.

Iraq had a somewhat different history. It was part of the Ottoman Empire, became controlled by Arabs, and then fell under the control of Britain. It became subject to a British Mandate in 1920, until a treaty between Britain and Iraq of 30 June 1930 conferred independence on Iraq, although pursuant to that treaty Iraq was compelled to consult Britain in all matter of foreign policy. Under British sponsorship, Iraq became a member of the League of Nations on 3 October 1932 when it gained full independence. Persia never became subject to the protection of any European state. Its official name changed to Iran on 21 March 1936.

Clearly a major feature of the Gulf's history is the influence of foreign power, in particular British power, so that by the end of the First World War "the Gulf had become, to all intents and purposes, a British lake".<sup>36</sup> Gulf States obtained independence after the wind of change following the Suez crisis in 1956 and the current of nationalism in the Middle East associated with it.<sup>37</sup> Kuwait terminated its special relationship with Britain in 1961.<sup>38</sup> It became a member of the Arab League in that year, and a member of the United Nations in 1963. Britain's protective relationship with Oman ceased in 1970, when it officially became the Sultanate of Oman. In August 1971, Bahrain became a sovereign state, thus also ending its relationship with Britain which had involved the latter's control over Bahrain's

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<sup>35</sup> Zahlan (1998), p. 16; Al-Baharna (1975), p. 4.

<sup>36</sup> Zahlan (1998), p. 19.

<sup>37</sup> For a general treatment of the subject, see K. Kyle, *Suez. Britain's End of Empire in the Middle East* (I.B. Tauris, London and New York, 2003).

<sup>38</sup> Zahlan (1998), p.47.

foreign affairs. In September 1971, Qatar also ended its relationship with Britain which had existed pursuant to treaty, becoming an independent state. Britain's official control of the Gulf ceased on the formation of the UAE on 2 December 1971, with Ras al Khaimah joining the UAE on 11 February 1972.

A crucial factor in the region was the discovery of oil and gas in the early twentieth century. Oil was discovered in Bahrain as early as 1932.<sup>39</sup> The relatively fast-growing need to delimit territorial and maritime boundaries in the region arose as a result of these discoveries and need to exploit these resources.<sup>40</sup> Additionally, in a number of areas in the Gulf, oil companies were granted concessions before there was any agreement as to the location of maritime boundaries. This obviously created a number of problems once a dispute arose between states or oil companies as to which fields they were entitled to exploit in the Gulf Sea. There was a continuing overriding need to establish with certainty which state's continental shelf was the location of known or potential oil or gas fields. This need for certainty had a fundamental impact on the delimitation of continental shelf boundaries in the region.

### **The significance of this study**

In order to understand the state practice on maritime delimitation of the continental shelf in the Gulf, it is crucial to place it within the broader context of international law in general, and the development of the latter is a necessary background to understanding the international law of the sea in general as it has emerged in modern times. The early eighteenth century may be taken as a starting point for the creation of the modern international law of the sea, a period which, while recognising in principle state sovereignty over the narrow coastal seas pertaining to littoral states,

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<sup>39</sup> J.C. Wilkinson, *Arabia's Frontiers: The Story of Britain's Boundary Drawing in the Desert*, (I.B. Tauris & Co Ltd, London, 1991, reprinted New York, 1993), p. xx. Price (1986) Vol. II at p.1 states that "the first lifting of crude oil took place from Bahrain. The export of crude from Saudi Arabia commenced in 1936 and the remaining States of Kuwait, Qatar, the UAE and Oman followed in 1946, 1949, 1962 and 1967 respectively".

<sup>40</sup> One example of such a territorial boundary problem, is the Buraimi Oasis dispute, which is continuing between Saudi Arabia and the UAE For an analysis of this particular dispute, see M.Q. Morton, *Buraimi. The Struggle for Power, Influence and Oil in Arabia* (I.B. Tauris, London and New York, 2013). The territorial boundary problems of the Gulf region are beyond the scope of this thesis.

conceived of the rest of the world's seas as high seas over which the European maritime powers exercised domination through freedom of navigation, trade and fishing. The nature of this starting point is one which has implications for the way that international law has developed. The effect that colonialism has had upon the development of the international legal order, for example, has been a seminal and continuing one.<sup>41</sup>

The rise to prominence of new states, including the Gulf States, in the period following the Second World War which was notable for many new states being created or obtaining independence from colonial masters, resulted in their increasing presence on the international level, which in turn influenced the development of international law. Such developments were coupled with advances in technology and ever-increasing demands for sea resources, which led to increasing forces for change to the international law of the sea as it then existed, and this in turn led to attempts at codification in various United Nations Conferences on the Law of the Sea (UNCLOS) in the second half of the twentieth century, as has been seen. It is the interaction between these developments which is a basis of this study.

There have been a number of texts, which have examined the law of the sea in the Gulf but which are now somewhat dated.<sup>42</sup> It is submitted that this thesis goes beyond these works not only in the fact that it is more up to date and therefore more comprehensive in examining the Gulf law and state practice which is the subject of this study.

El-Hakim published a scholarly overview of the law of the sea of the Middle Eastern States as a whole in 1979.<sup>43</sup> While of great value in its comprehensiveness, his work does little in terms of presenting a final conclusion or framework of analysis,

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<sup>41</sup> A. Anghie, "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law", (1999) 40 *Harvard ILJ* 1, at p.75.

<sup>42</sup> See A.A. El-Hakim, *The Middle Eastern States and the Law of the Sea* (Manchester University Press, Manchester, 1979); S.H. Amin, *International Legal Problems of the Gulf* (Middle East and North African Studies Press Ltd., London, 1981); C.G. MacDonald, *Iran, Saudi Arabia and the Law of the Sea* (London, Greenwood Press, 1980). Blake, G., (ed.), *Maritime Boundaries and Ocean Resources* (Croom Helm, London, 1987) and R. Schofield (ed.), *Territorial foundations of the Gulf States* (UCL Press, London, 1994) deal with maritime boundaries in the Gulf from the viewpoint of political geography. A. Razavi, *Continental Shelf Delimitation and Related Maritime Issues in the Persian Gulf* (Martinus Nijhoff Publishers, The Hague, 1997) is the most recent work known to the author in the English language which deals exclusively with the law of the sea in the Gulf.

<sup>43</sup> El-Hakim (1979).

and this can be explained by the point in time in which he was writing. In his short final chapter entitled “General Conclusions”, El-Hakim briefly sets out some fundamental propositions.<sup>44</sup> They merit some detailed consideration here.

Firstly, he states that in relation to the past practice of Middle Eastern states, in the light of “their ‘recentness’ in terms of the existence of Statehood, not much useful analysis can be gained from [their] previous conduct and legislation”. In an attempt to elaborate this suggestion he states that they “‘accepted’ subconsciously so-called customary international law”.<sup>45</sup>

Secondly, he refers to a subsequent period which he names “the transition from the past to the present” which he does not define further, during which, he states, the Middle Eastern States were affected by a number of problems as follows:

Firstly, there was a great lack of international law personnel. Secondly, there was reticence. The Middle Eastern States never really considered themselves as being affected by the esoteric details of the law of the sea. They thought only in terms of their small geographical environment. Thirdly, since their independence most of the States concerned have been engaged in constant, though sporadic, conflict. Lastly, they were economically weak. All these factors militated against the formulation of any concrete and common policies on the law of the sea.

Thirdly, El-Hakim then refers to the “present attitudes of the Middle Eastern states”.<sup>46</sup> These, he suggests, are motivated by “international affairs and diplomacy but also...the economic importance of the upsurge in the price of oil”. He then refers to the Middle Eastern states identifying with the aspirations of other Third World countries, and refers to their sympathy with the developing doctrine of the 200nm Exclusive Economic Zone.<sup>47</sup>

These are stark and relatively simplistic conclusions. They are not wholly borne out by the findings of this thesis in respect of all of the Gulf States. This thesis will in due course show that there was a strong contribution by Iran and Saudi Arabia

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<sup>44</sup> See *ibid.*, pp. 189-192 for his concluding chapter.

<sup>45</sup> *Ibid.*, p. 190.

<sup>46</sup> *Ibid.*, p 192, the “present” being the late 1970s.

<sup>47</sup> This maritime zone, which is to be discussed more fully in due course in this thesis, was advocated mostly by developing countries who saw it as a means of combating the desire for freedom of the seas sought by maritime Powers.

in the 1940s and 1950s to the development of the international law of the sea, and an awareness and desire to engage with international law and that subsequently, on achieving independence, the other Gulf states also engaged with international law in various ways in which identifiable patterns emerged in relation to the more recent state practice. El-Hakim went on to write of the Middle Eastern states and the law of the sea, that “[i]n so far as the future is concerned, one can only speculate or make tentative forecasts...”<sup>48</sup> It is suggested that this thesis is, at this present time, able to present findings which go beyond the tentative, having had the advantage of surveying developments in the Gulf law of the sea and relevant state practice to the present date.

In his seminal work of 1980 it may be said that MacDonald presented a more cohesive argument albeit one which focused upon only two states, namely Iran and Saudi Arabia. In analysing the relationship of Iran and Saudi Arabia with the international law of the sea, MacDonald came to a number of interesting conclusions. He found that Iran and Saudi Arabia, being states which were not “protected” by the British unlike the other Gulf States, were the first to engage with international law through their national legislation, and also through the kinds of agreements which they entered into in order to delimit their continental shelf. Indeed, according to MacDonald, they influenced the other Gulf States in terms of their state practice and relationship with the international law of the sea. One of the aims of this study is to examine this contention.<sup>49</sup>

MacDonald also draws another conclusion, namely that Iran and Saudi Arabia, by the time of the 1970s had not only used the international law of the sea as an “instrument”, but viewed it as having the effect of a “restraint” on their actions, and engaged within its limits in terms of their discourse, for example, at the UNCLOS conferences, in which they contributed to the developing international law of the sea.<sup>50</sup> In fact, MacDonald went as far as to state that:

Although some disputes remain and despite the fact that none of the Persian Gulf states have acceded to any of the 1958 Geneva conventions on the law of

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<sup>48</sup> El Hakim (1979), p. 191.

<sup>49</sup> See MacDonald (1980), for example, pp. 198, 201.

<sup>50</sup> *Ibid.*, p. 201-205

the sea, a sophisticated international law of the sea has been established in the Persian Gulf.<sup>51</sup>

In considering this suggestion, it is worth noting El-Hakim's conclusion at around the same time that "one cannot discern an exclusively Middle Eastern approach to sea law".<sup>52</sup> Both suggestions are not necessarily contradictory of each other. Nevertheless they raise a number of questions of whether it may be said that there is a coherent, identifiable law in the region, and this thesis sets out to examine such issues. It should also be remembered that MacDonald, an American, was writing during the Cold War, and seems at pains to emphasise the willingness of Iran and Saudi Arabia to engage in a symbiotic relationship with international law. This thesis has the advantage of surveying more widely the practice of other Gulf States, in order to analyse their relationship with international law so as to discover whether they have viewed it as a legitimate restraint on their actions or not.

Razavi's text on continental shelf delimitation in the Gulf is another comprehensive work. Published in 1997, he conducted a wide survey of Gulf State practice and his concluding chapter makes some important observations upon the relationship between Gulf state practice on continental shelf delimitation and the wider international law context. However, due to the period in which he published his work, the conclusions did not have the advantage of recent state practice and he was not able to place it in the context of more recent international law case law.

This thesis contributes to this field in a number of ways. Firstly, it seeks to set Gulf State practice in the context of the most up to date international case law at the time of writing. Secondly, it refers to all the relevant Gulf legislation as far as is known to the writer in the English language. The legislation of Gulf States is notoriously difficult to access, whether in English or in the original Arabic, due to the lack of centralised sources of legislation officially maintained by the Gulf States. Therefore, the attempt by this thesis to refer to all relevant national legislation to date, is, it is suggested, of empirical use. Thirdly, this thesis seeks to identify trends in Gulf

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<sup>51</sup> *Ibid.*, p. 201.

<sup>52</sup> El-Hakim, (1979), p. 191. At another point in the text, namely at p. 130, El Hakim asserts that it may be suggested that "a regional customary law" has arisen in the Gulf with regard to delimitation of the continental shelf in accordance with the rule contained in Article 6 CSC 1958. Such a suggestion is difficult to sustain, as discussed in Chapter 7 of this thesis.



state practice. Fourthly, it is the aim of this thesis to analyse Gulf State practice in the context of international law to assess the relationship between them, and determine the degree to which Gulf State practice is consistent with international law and the ways in which it is not.

The rest of this thesis is structured as follows. Chapter 2 looks at the sources of international law in general, and surveys the international treaty provisions governing the maritime zones, focusing mainly on their basic nature, their uses, and their outer limits. International treaty provisions governing delimitation of maritime boundaries are also dealt with in the same chapter. Chapter 3 examines case law of the ICJ and arbitral tribunals on maritime delimitation, with particular reference to the delimitation of continental shelf and EFZ/EEZ boundaries. Chapter 4 deals with Gulf national legislation on baselines, the territorial sea and the contiguous zone, and Chapter 5 considers Gulf national legislation on the continental shelf and the EFZ/EEZ. Chapter 6 considers the bilateral maritime boundary delimitation agreements between the Gulf States. Chapter 7 presents an analysis of the relationship between Gulf State practice and international law on the basis of the research conducted, and Chapter 8 presents the final conclusions.

## **Chapter 2**

### **The Sources of International Law, Maritime Limits and Delimitation**

#### **Introduction**

This Chapter initially provides a short introduction to the sources of international law. This is not intended to be an exhaustive exercise, nor is it carried out with the aim of performing a critical analysis of the theory of sources. Its purpose is to shed light upon the significance of treaties, which, in bilateral form, are of great significance in Gulf law and state practice on delimitation of the continental shelf. Further, this section on sources also provides a context for international case law on delimitation and the importance it has had in the development of customary law on delimitation. Such case law's significance for Gulf law and state practice will also be examined in due course.

It is further intended that this Chapter, in briefly surveying the international law on maritime limits and delimitation in general, will provide a useful context to the substantive consideration of Gulf law and state practice in the chapters that follow. In particular, this Chapter will aid in the consideration of the relationship between such Gulf law and state practice and the general rules of international law and assist in the analysis as to whether Gulf States have conformed with international law.

## **The sources of international law** <sup>53</sup>

Article 38(1) of the Statute of the International Court of Justice (“the ICJ”) 1945 states as follows:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
  - (b) international custom, as evidence of a general practice accepted as law;
  - (c) the general principles of law recognized by civilized nations;
  - (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto. <sup>54</sup>

Although this Article is framed as a statement of what the ICJ considers in deciding disputes, and although nowhere is there reference to the fact that the Article enunciates the sources of international law, the Article has traditionally been seen as a general statement of the sources of public international law. Whether it is a comprehensive one and whether it can be taken to be in order of priority is a matter of some debate.<sup>55</sup> The most important and relevant sources of law to this study are

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<sup>53</sup> For a detailed explanation of the sources of international law see, for example, B. Cheng, “United Nations Resolutions on Outer Space: “Instant” Customary Law?” (1965) 5 *Indian J Int L* 23; M. Akehurst, “Custom as a Source of International Law”, (1974-5) 47 *BYIL* 53; M. Akehurst, “Equity and General Principles of Law”, (1976) 25 *ICLQ* 801; W. Czaplinski, “Sources of Law in the Nicaragua Case”, (1989) 81 *AJIL* 93; O. Schacter, “The Twilight Existence of Non-binding International Agreements”, (1977) 71 *AJIL* 296; P. Weil, “Towards Relative Normativity in International Law”, (1983) 77 *AJIL* 413; R. Charney, “Universal International Law”, (1993) 87 *AJIL* 529; M. Mendelson, “The Subjective Element in Customary International Law”, (1995) 66 *BYIL* 177; D. Shelton, “Normative Hierarchy in International Law”, (2006) 100 *AJIL* 291; D.J. Bederman, *Custom as Source of Law* (Cambridge University Press, Cambridge, 2010); H.W.A. Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Oxford University Press, Oxford, 2013); M.P. Scharf, *Customary International Law in Times of Fundamental Change. Recognizing Grotian Moments* (Cambridge University Press, Cambridge, 2013).

<sup>54</sup> The Statute of the International Court of Justice 1945. Article 59 states that “[t]he decision of the Court has no binding force except between the parties and in respect of that particular case.”

<sup>55</sup> See J. Crawford, *Brownlie’s Principles of Public International Law* (8<sup>th</sup> ed., Oxford University Press, Oxford, 2012), pp. 22-3 (henceforth *Brownlie’s Principles* (2012)).

those referred to in Article 38(1)(a), (b) and (d), namely treaties, international customary law, and judicial decisions respectively.

### **i. Treaties**

The explicitly agreed rights and obligations in treaties naturally have primacy in the hierarchy.<sup>56</sup> These can be multilateral, such as the United Nations Convention on the Law of the Sea 1982,<sup>57</sup> or they may be bilateral, such as the bilateral agreements on maritime boundaries between the Gulf States.<sup>58</sup> Certain treaties may be described as “law-making”, and as such they create general rules governing future state behaviour.<sup>59</sup> Their relationship with customary international law is interesting and relevant to this study and is dealt with briefly below.

### **ii. Customary international law**

Article 38(1)(b) refers to international custom “as evidence of a general practice accepted as law”. The range of possible sources of custom is broad. *Brownlie’s Principles* suggests several “material sources”, including, for example, diplomatic correspondence, statements of policy, press releases, the opinions of official legal advisers, comments by governments on drafts produced by the International Law

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<sup>56</sup> However, as made clear in *Brownlie’s Principles* (2012), pp. 22-23 such a status of primacy may not be the case in every situation, for example, a treaty obligation may be subsequently supplanted by a rule of customary international law.

<sup>57</sup> The international law of the sea has been characterised by a number of multilateral conventions. The four Geneva Conventions of 1958 are comprised of: the Convention on the High Seas 1958, in force on 30 September 1962; the Convention on the Continental Shelf 1958, in force on 10 June 1964; the Convention on the Territorial Sea and the Contiguous Zone 1958, in force on 10 September 1964; the Convention on Fishing and Conservation of the Living Resources of the High Seas 1958, in force on 20 March 1966. The U.N. Convention on the Law of the Sea 1982, which came into force on 16 November 1994, was intended to revise the four Geneva Conventions of 1958 and to be a new and comprehensive “Constitution for the Oceans”, taking into account new developments in the use of the sea and new technology. None of the Gulf States were ever party to any of the 1958 Conventions. Apart from Iran and UAE which have signed but not ratified the 1982 Convention, the remaining Gulf States are Parties to the 1982 Convention. However, certain provisions of the 1982 Convention would be binding on Iran and UAE as a result of having become customary law.

<sup>58</sup> See Chapter 6 for an evaluation of these bilateral agreements.

<sup>59</sup> See *Brownlie’s Principles* (2012), pp. 30-32.

Commission, national legislation, international and national judicial decisions, recitals in treaties, and a pattern of treaties with repeated content.<sup>60</sup> *Brownlie's Principles* also makes the important point that the value of such sources varies, with the specific circumstances of each requiring to be taken into account.<sup>61</sup> Customary law is made up of two main elements, firstly state practice, and secondly, *opinio juris sive necessitatis*.

a. State practice

The “general practice” referred to by Article 38(1)(b) needs to be consistent, general and uniform, although substantial rather than complete uniformity is required, and a specific duration of such practice is not necessary.<sup>62</sup> For example, the ICJ in the *Asylum Case (Columbia v Peru)* (1950) stated that what was required was “a constant and uniform usage practised by the States in question”.<sup>63</sup> The practice needs to be general amongst states, but need not be universal.<sup>64</sup>

b. *Opinio iuris sive necessitates*<sup>65</sup>

Article 38(1)(b) refers to the need for state practice to be “accepted as law”. In the *North Sea Continental Shelf* cases (1969) the ICJ stated that:

Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*. The States concerned must therefore feel that they are conforming to what amounts to a legal

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<sup>60</sup> *Brownlie's Principles* (2012), p.24.

<sup>61</sup> *Ibid.*, p. 24.

<sup>62</sup> *Ibid.*, p.24..

<sup>63</sup> [1950] ICJ Rep 266, at 276.

<sup>64</sup> *Brownlie's Principles* (2012), p. 25.

<sup>65</sup> *Brownlie's Principles* (2012) states at page 26, n. 31 that the literal meaning of this phrase is “an opinion of law or necessity”. It is often shortened to “*opinio juris*”.

obligation. The frequency, or even habitual character of the acts is not in itself enough.<sup>66</sup>

c. The responses of states

The responses of states to the practice of other states, whether in the form of protest, acquiescence or consent, are an important consideration in identifying customary international law or the lack of it. Responses may be expressed in a number of ways, for example by diplomatic correspondence, governmental policy statement, or by means of national legislation. A protest may indicate that the state practice being protested against is contrary to customary law, and may even go to show that the practice which the protest promotes or is based upon is instead part of established customary law. State responses may additionally be crucial as part of the formation of customary law over the course of time. Thus a response may influence a state's practice or a state's view on what its right or obligation is. Such a state may as a result change or be confirmed in its view, and therefore, eventually, over the course of time, although a long passage of time is not necessary, state practice may crystallise into customary law.

d. The persistent objector

During the formation of customary law, a state may show that it does not wish to be bound by the rule developing into customary law. There is a presumption of acceptance which may be rebutted by clear evidence of objection.<sup>67</sup> In this regard, it is useful to consider the *Asylum Case (Columbia v Peru)*.<sup>68</sup> After an unsuccessful military rebellion in Peru in 1948, Colombia granted asylum to a Peruvian leader in the rebellion, Haya de la Torre, in its Peruvian Embassy in Lima. Colombia sought

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<sup>66</sup> ICJ Reports (1969), 3, para 77. Para 78 refers to and follows the approach in the *Lotus* case P.C.I.J., Series A, No. 10, 1927, at p. 28 which required states to be conscious of a legal duty for *opinio juris* to exist. In *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States (Merits))* [1986] ICJ Rep 14, at para. 207, the ICJ referred to the above paragraph of the *North Sea Continental Shelf* cases (1969). Its approach followed that of the earlier case.

<sup>67</sup> Brownlie's *Principles* (2012), p.28.

<sup>68</sup> [1950] ICJ Rep 266.

from Peru safe conduct for him, but Peru refused. Colombia sought to argue that it had the competence to “qualify” (i.e. “characterise”) the offence as a political one or non-political one for the purposes of granting such asylum, and sought to rely on *inter alia*, “regional or local custom” regarding the law of political asylum existing among Latin American states.<sup>69</sup> The ICJ failed to find the existence of such a custom, and went on to state in its Judgment that:

But even if it could be supposed that such a custom existed between certain Latin-American States only, it could not be invoked against Peru which, far from having by its attitude adhered to it, has, on the contrary, repudiated it by refraining from ratifying the Montevideo Conventions of 1933 and 1939, which were the first to include a rule concerning the qualification of the offence in matters of diplomatic asylum.<sup>70</sup>

Similarly, in the *Anglo-Norwegian Fisheries* case (1951), the UK contended that the drawing of a closing line of a bay, which forms a baseline for determining the breadth of the territorial sea, was limited to where the closing line was no more than 10 miles long. However, the ICJ, in stating that state practice on this was not consistent, confirmed that “the ten mile rule has not acquired the authority of a general rule of international law”.<sup>71</sup> Moreover, Norway had objected to this. The ICJ stated that “[i]n any event the ten-mile rule would appear to be inapplicable as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian coast.”<sup>72</sup>

e. Regional customary law

The rules for the establishment of customary international law, which apply to all states in general, may be adapted to apply to a smaller group of states. In the *Asylum Case (Colombia v Peru)* (1950) the ICJ stated:

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<sup>69</sup> *Ibid.*, p.276.

<sup>70</sup> *Ibid.*, pp. 277-278.

<sup>71</sup> [1951] ICJ Rep 116, at p.131.

<sup>72</sup> *Ibid.*, p.131.

The Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other Party. The Colombian Government must prove that the rule invoked by it is in accordance with a constant and uniform usage practised by the States in question, and that this usage is the expression of a right appertaining to the State granting asylum and a duty incumbent on the territorial State. This follows from Article 38 of the Statute of the Court, which refers to international custom "as evidence of a general practice accepted as law."<sup>73</sup>

The ICJ concluded that Colombia had failed to establish the existence of such a custom.

A regional custom may be established by only two states. In a *Case concerning Right of Passage over Indian Territory (Portugal v India) (Merits)*, Portugal argued that it benefitted from a local custom established between it and India enabling it to exercise certain rights of passage between its territory of Damão and its enclaved territories of Dadrá and Nagar-Aveli, and in between each of the latter.<sup>74</sup> India contended that a local customary law could not be established between only two states. However, the ICJ saw no reason why a long continued practice between two states accepted by them as regulating their relations could not constitute local customary law.<sup>75</sup>

### **iii. The relationship between treaties and customary law**

Where treaties create general norms governing the future actions of those states party to them, they may be described as “law-making” treaties.<sup>76</sup> Although they are theoretically only binding on the parties, the legal rules contained within them may in fact go towards developing customary law and indeed become customary law, where there is consent to them by non-parties.<sup>77</sup> This is particularly true of

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<sup>73</sup> [1950] ICJ Rep 266, at pp. 276-277.

<sup>74</sup> [1960] ICJ Rep 6 at p. 9.

<sup>75</sup> *Ibid.*, p.39.

<sup>76</sup> *Brownlie's Principles*, pp. 30-32.

<sup>77</sup> *Ibid.*, pp. 31-2.



multilateral conventions, but bilateral treaties may also be a source of the development of customary law. It is also important to note that even where treaty norms become customary law, customary law rules continue to have their own separate applicability, even where the content of both are the same, so that the operation of both exists alongside each other.<sup>78</sup>

In the *North Sea Continental Shelf* cases (1960), the ICJ examined the issue of whether the rule on delimitation of the continental shelf in Article 6 of the CSC 1958 had become customary law. In relation to the process whereby a rule in a treaty, such as the relevant rule in Article 6, may have passed into customary law, and become binding on non-parties to the treaty, the ICJ stated:

There is no doubt that this process is a perfectly possible one and does from time to time occur: it constitutes indeed one of the recognized methods by which new rules of customary international law may be formed. At the same time this result is not lightly to be regarded having been attained.<sup>79</sup>

The ICJ went on to state that firstly, the treaty norm “should, at all events potentially, be of a fundamentally norm-creating character such as could be regarded as forming the basis of a general rule of law.”<sup>80</sup> The ICJ proceeded to examine “the other elements usually regarded as necessary before a conventional rule can be considered to have become a general rule of international law”, and stated that:

even without the passage of any considerable period of time, a very widespread and representative participation in the convention might suffice of itself, provided it included that of States whose interests were specially affected.<sup>81</sup>

The ICJ then referred to the element of duration, stating that while a short period of time

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<sup>78</sup> See I. Brownlie, *Principles of Public International Law* (7<sup>th</sup> ed., Oxford University Press, Oxford, 2008), pp. 13-14

<sup>79</sup> [1969] ICJ Rep 3, para. 71.

<sup>80</sup> *Ibid.*, para. 72.

<sup>81</sup> *Ibid.*, para. 73.

is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what was originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked;- and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.<sup>82</sup>

**iv. Judicial decisions and their significance as a source of law, in particular as a source of customary international law of the sea**

Judicial decisions are described as a “subsidiary means for the determination of rules of law” in Article 38(1)(d) of the Statute of the ICJ. As such, they are not formally a source but are evidence of the law.<sup>83</sup> In principle, not only decisions of the ICJ but also those of international arbitral tribunals should be included in this category. The reference to judicial decisions as subsidiary means for the determination of the law in Article 38(1)(d) is expressed to be subject to the provisions of Article 59. The latter provision states that “[t]he decision of the Court has no binding force except between the parties and in respect of that particular case”. Therefore this would seem to rule out a system of law-making by means of precedent, and in fact there is no formal system of precedent to be identified in the decisions of the ICJ. However, the ICJ as well as arbitral tribunals have exhibited a trend towards an attempt at consistency in their decisions, very often referring to previous decisions and to the decisions of each other, attempting to show a line of development. The decisions on maritime delimitation are a good example of this.

Furthermore it is without doubt that certain international case law has contributed to and strongly influenced the law. A number of commentators have observed that case law has in fact developed and indeed created customary international law on delimitation of the continental shelf and Exclusive Economic

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<sup>82</sup> *Ibid.*, para. 74.

<sup>83</sup> *Brownlie's Principles* (2012), p. 37.

Zone (“EEZ”).<sup>84</sup> Thus international case law has actively developed such law rather than simply applied existing law. It is worth considering the reasons for this at this juncture. As will be seen in the remaining sections of this Chapter, the treaty provisions governing delimitation are characterised by flexibility and indeed vagueness. For example, this is the case in respect of the application of Article 6 CSC 1958 on delimitation of the continental shelf, and Articles 83(1) and 74(1) LOSC 1982 on delimitation of the continental shelf and EEZ respectively say very little other than referring to “international law” and an “equitable solution”. When the infinitely diverse geographic scenarios of individual boundary delimitation issues are added to the equation, it may easily be appreciated that bilateral treaties deal with individual maritime boundary questions directly linked to the individual diverse circumstances particular to the geographical areas in question, and are unlikely to have wider significance as sources of customary international law.<sup>85</sup> This is despite the fact that bilateral treaties are likely to be the most important element of state practice governing delimitation.

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<sup>84</sup> For example, see R.R. Churchill and A.V. Lowe, *The Law of the Sea* (3<sup>rd</sup> ed., Juris Publishing, Manchester University Press, Manchester, 1999) at p. 192 who state that “[c]ustomary international law relating to the delimitation of the EEZ and/or fishing zone between neighbouring States has been developed by the International Court and arbitral tribunals in much the same way as they have done for continental shelf delimitation.” P. Weil, *The Law of Maritime Delimitation – Reflections* (Grotius Publications Ltd, Cambridge, 1989) states at p. 7 that “[i]nternational tribunals, and in particular the International Court of Justice, in half-a-dozen *causes célèbres*, have made a *capitis deminutio* of the treaty source and themselves undertaken the direct definition of the law of maritime delimitation, giving it the appearance and name of general or customary international law. There is probably no other chapter of international law which has been written so exclusively and rapidly by the international courts.”

<sup>85</sup> In this regard, P. Weil (1989) states at p. 7 that multilateral and bilateral treaties have played a minimal role in the law of maritime delimitation; in relation to multilateral treaties, he cites the “limited” importance the courts have given the CSC 1958 provision on delimitation of the continental shelf, as well as the lack of “precise normative content” in Articles 74(1) and 83(1) LOSC 1982 on delimitation of the EEZ and continental shelf respectively; bilateral agreements have also had a limited significance in that they have not “developed into a practice generating customary law”. Y. Tanaka, *The International Law of the Sea* (Cambridge University Press, Cambridge, 2012) (2012) makes similar observations, referring at p. 226 to the “significant role of judicial creativity” which can be explained by at least two reasons. Firstly, in order “to achieve equitable results, there is a need to take various geographical and non-geographical factors into account”, and because there cannot be “specific rules regarding each and every factor to be considered”, the ICJ and tribunals “often face potential lacunae in the law”, and therefore “need to develop rules with regard to the effect to be attributed to those factors in the framework of equitable principles”. Secondly, in bilateral maritime boundary agreements, parties “seldom explain why and to what extent a certain relevant circumstance has been taken into account when drawing a maritime boundary”. As such, “it is difficult to find evidence of *opinio juris* in State practice. Here there is an inherent difficulty in identifying customary rules in the field of maritime delimitation. Accordingly, it is hardly surprising that international courts and tribunals have to rely mainly on judge-made law”.

Not only is there a need for flexibility in relation to the law governing maritime delimitation, but also a need to guard against vagueness in the law. International case law has a special significance in the law of maritime delimitation of the continental shelf and EEZ in that it has performed the function of filling in the gaps created by the unclear language of provisions of the Conventions. Case law has a further significance in that it has become a means for the ICJ and arbitral tribunals to declare customary law, without seeking a pattern of state practice and *opinio juris*. In this way, case law has contributed significantly to customary law, and may be said to be the most important source of the international law of the sea.<sup>86</sup> This is seen, famously, in the first ICJ Judgment considered below, namely that of the *North Sea Continental Shelf* cases (1969).<sup>87</sup> International case law is the subject of Chapter 3.

## **Maritime zones in international law**

### **i. Introduction to the international law of the sea**

In what follows there is firstly a brief examination of the international law rules relating to the basic nature of the different maritime zones and the law governing the extent of the maximum limit which a state is entitled to claim. This area of enquiry may be referred to as the maritime limits of a state.<sup>88</sup> The concept of maritime limits is wholly distinct from that of delimitation, the latter which refers to the demarcation of the boundary line between the overlapping maritime zones between states.<sup>89</sup> The general law governing delimitation will be looked at in the next section of this chapter. With regard to both maritime zones and their delimitation, this chapter

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<sup>86</sup> See Weil (1989) at p. 7 who states that “nowadays, the law of maritime delimitation usually means the customary law.”

<sup>87</sup> [1969] ICJ Rep 3. This case declared what customary law was. See Chapter 3 for further elaboration.

<sup>88</sup> For discussion of the terms “maritime limit” and “maritime space”, which may be used interchangeably, see Y. Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation* (Hart, Oxford, 2006), pp. 7-8.

<sup>89</sup> See *Ibid.*, pp. 7-11 for a useful treatment of the distinction between maritime limits and maritime delimitation.

examines the law as set out in the relevant multilateral Conventions, as well as in the customary law, and since the focus of this thesis is delimitation of the continental shelf, more space is dedicated to the law governing that topic. Additionally, it is for this reason that this study does not examine the nature of the rights within each zone in great detail or the history of the development of the zones, although these are touched upon in passing where this assists in understanding the nature of the Gulf law on delimitation and its relationship with international law.

The importance of the consideration of customary international law for this particular study results from four main factors which it is useful to refer to at this juncture. Firstly, none of the Gulf States were parties to the 1958 Geneva Conventions. Secondly, the Gulf States ratified the LOSC 1982 at different times, and therefore were subject to customary international law at various differing times. Thirdly, the LOSC 1982 did not come into force until 16 November 1994, and therefore those Gulf States which ratified it before this date continued to be subject to customary international law. Fourthly, as at 31 March 2016, neither Iran nor the UAE have ratified LOSC 1982, and therefore they are governed by customary international law.<sup>90</sup>

While prior to the twentieth century, the development of the law of the sea had been sporadic and relatively slow paced, for the first time in the twentieth century, international law saw serious and sustained attempts to develop and codify the law of the sea, and a number of multilateral Conventions came into force. As well as the League of Nations Hague Conference of 1930, there were three United Nations Conferences on the Law of the Sea. The first, to be referred to as UNCLOS I in this work, took place in 1958 in Geneva. As a result of this Conference, four Geneva Conventions of 1958 came into existence. These were the Convention on the High Seas 1958, which came into force on 30 September 1962, the Convention on the

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<sup>90</sup> The LOSC 1982 opened for signature on 10 December 1982. The other Gulf States have signed and ratified the LOSC 1982 as follows: Bahrain signed 10 December 1982 and ratified 30 May 1985; Iraq signed 10 December 1982 and ratified 30 July 1985; Kuwait signed 10 December 1982 and ratified 2 May 1986; Oman signed 1 July 1983 and ratified 17 August 1989; Qatar signed 27 November 1984 and ratified 9 December 2002; Saudi Arabia signed 7 December 1984 and ratified 24 April 1996. Iran and the UAE both signed on 10 December 1982. Up to date information as to the ratification of the LOSC 1982 by states is available from the online database of multilateral treaties deposited with the Secretary General at: [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtsg\\_no=XXI-6&chapter=21&Temp=mtsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtsg_no=XXI-6&chapter=21&Temp=mtsg3&clang=en) (accessed 4 July 2016).

Continental Shelf 1958 (henceforth “CSC 1958”), which came into force on 10 June 1964, the Convention on the Territorial Sea and the Contiguous Zone 1958 (henceforth “TSCZ 1958”), which came into force on 10 September 1964, and the Convention on Fishing and Conservation of the Living Resources of the High Seas 1958, which came in force on 20 March 1966. The second United Nations Conference, to be referred to hereinafter as UNCLOS II took place in 1960 in Geneva, and was convened in order to decide on a limit for the breadth of the territorial sea and exclusive fisheries zone (“EFZ”) but no agreement was reached, and therefore the Conference did not result in a Convention. The third United Nations Conference, to be referred to as UNCLOS III, was convened between 1973 and 1982, as a result of which the United Nations Convention on the Law of the Sea 1982 (henceforth “LOSC 1982”) emerged, which only came into force on 16 November 1994. Article 311(1) of the LOSC 1982 states that it supersedes the 1958 Conventions.

In order to understand the development of the law of the sea in the twentieth century, it is imperative initially to examine the historical background. The seventeenth century was characterised by fundamental jurisprudential debates in this area of law. In 1608, Grotius (1583-1645), the Dutch international law scholar, was asked by the Dutch East India Company to publish a work promoting the Dutch right to exercise free navigation and trade in the East Indies, despite Portugal’s claims to ownership of expanses of sea in the area. As a result, he published his work *Mare Liberum* in 1609.<sup>91</sup> Essentially, the basic premise of the book is that the open sea is free to all, and cannot be brought under the sovereignty of any state. Such a position was inevitably to be assumed by strong maritime powers in an era of maritime exploration and trade and it was met by opposition by those such as the English writer Selden who wrote his treatise *Mare Clausum* in 1618, which was published in 1635.<sup>92</sup> The promotion of the “closed sea” in Selden’s text was very much in line with contemporary British claims to control of the seas around the British Isles. Out of the

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<sup>91</sup> R.R. Churchill and A.V. Lowe, *The Law of the Sea* (Juris Publishing, Manchester University Press, 1999), p. 4. The full title of Grotius’ text is *Mare liberum sive de iure quod Batavis competit ad Indicana commercia dissertatio*, translated as ‘The Free Sea or a Dissertation on the Right which the Dutch Have to Carry on Indian Trade’. See Hugo Grotius, *Mare Liberum*, original Latin text (facsimile of the first edition, 1609) and modern English translation, edited and annotated by Robert Feenstra (Brill, Leiden, 2009).

<sup>92</sup> Churchill and Lowe (1999), p. 4.

debates between proponents of freedom of the seas, and supporters of “closed seas”, emerged the distinction between the freedom of the seas, and a state’s rights over the seas close to its shore, those seas being known historically as the territorial waters, or, in modern terminology, the territorial sea. In fact, these two different ideas complimented each other in furthering the aims of the maritime powers, whose interests were to be served by territorial sovereignty exercised in the territorial sea, as well as the freedom to navigate and fish in the seas beyond this limit. In the centuries since the development of these arguments, and in particular in the twentieth century, there has been a proliferation of other different claims to uses of the sea which have resulted in a number of legally recognizable maritime zones. These will be surveyed in due course in this chapter.

## **ii. Introduction to baselines**

Baselines are crucial in the law of the sea for three fundamental reasons.<sup>93</sup> Firstly, they are the lines from which the outer limits of the territorial sea and other maritime zones of states are established. They are therefore fundamental to the method by which the breadth of various maritime zones are measured. The LOSC 1982 provides a scheme whereby the outer limit of such maritime zones are at certain distances from the baselines from which the breadth of the territorial sea is measured.<sup>94</sup> Secondly, the baseline of the territorial sea is also normally the boundary line which lies between a state’s internal waters and its territorial sea, so that the area of sea in between the land and the baseline consists of internal waters.<sup>95</sup> Thirdly, baselines may play a part in the delimitation of maritime boundaries between states, for example an equidistance line between two states may be measured wholly or partly from the baselines of each state.

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<sup>93</sup> The three reasons which follow are set out in Churchill and Lowe (1999), p. 31.

<sup>94</sup> For references to the baselines in relation to each maritime zone, see Articles 3-4 (territorial sea), 33(2) (contiguous zone), 57 (EEZ), and 76 (continental shelf), of LOSC 1982.

<sup>95</sup> Article 8(1) of LOSC 1982.

a. The general rule

The general rule is that contained in Article 5 of the LOSC 1982, which states that:

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State.<sup>96</sup>

The use of the low-water line or mark is an old-established usage. The ICJ in the *Anglo-Norwegian Fisheries* case (1951) stated that it:

has no difficulty in finding that, for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, or the mean between the two tides, which has generally been adopted in the practice of States.<sup>97</sup>

Therefore, such use is based on customary international law, and evidenced by state practice. There are other notable provisions which supplement the general rule as follows.

b. Reefs

In the case of islands situated on atolls or islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognised by the coastal state (Article 6, 1982 LOSC).

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<sup>96</sup> This is a reiteration of Article 3 TSCZ 1958.

<sup>97</sup> [1951] ICJ Rep. 116 at 128.



c. Harbour works

The outermost permanent harbour works which form an integral part of the harbour system are to be regarded as forming part of the coast and therefore may be used as the baseline, but off-shore installations and artificial islands shall not be considered as permanent harbour works (Article 11, LOSC 1982).

d. Low-tide elevations

Article 13(1) of the LOSC 1982 defines a low-tide elevation as a naturally formed area of land which is surrounded by water and which is above water at low tide but is submerged at high tide.

Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea. However, if a low-tide elevation is situated wholly at a distance exceeding the breadth of the territorial sea from the mainland or an island, it does not have its own territorial sea (Art 13, LOSC 1982).

e. Islands

The LOSC 1982 defines an island as a naturally formed area of land which is surrounded by water, and which is above water at high tide (Art 121(1), LOSC 1982). Islands are entitled to their own territorial sea. The territorial sea of an island is measured according to the general rules on baselines (Art 121(2), LOSC 1982). The attribution of a territorial sea to islands seems to have been a part of customary law prior to 1958.<sup>98</sup> Moreover, all islands can provide baselines for all a state's maritime zones, namely the territorial sea, contiguous zone, EEZ and continental shelf (Art 121(2), LOSC 1982), but rocks which cannot sustain human habitation or economic

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<sup>98</sup> Churchill and Lowe (1999), p. 49.

life of their own can only provide the baseline for the territorial sea and the contiguous zone (Art 121(3) LOSC 1982). The words “rock”, “human habitation” and “economic life” are notoriously vague and difficult to define.<sup>99</sup>

f. Departure from the general rule

Under various geographical conditions, the general rule may be departed from, and instead of using the low-water line as the usual baseline, other baselines are provided for in the LOSC 1982. It is easy to see how the general rule is most appropriate where the coastline is relatively un-indented. In contrast, straight baselines are a method to overcome problems presented by irregular and indented coastlines or those which are characterised by an island fringe. The relevant rules on straight baselines were initially enunciated in the Judgment of the ICJ in the *Anglo-Norwegian Fisheries* case (1951).<sup>100</sup> In that Judgment, the ICJ held that the straight baselines applied by Norway, joining the outer limits of islands and rocks which constitute its very indented and irregular coastline, were in accordance with customary international law.<sup>101</sup> The customary law of straight baselines had evolved in the context of claims by Norway prior to the resolution of the issues in that Judgment.<sup>102</sup> Because much of its coast is made up of the *skjaergaard*, constituted by islands, reefs, rocks, islands and fjords, from the mid-nineteenth century, Norway had used a system of straight lines connecting the outermost points on the *skjaergaard* as baselines.<sup>103</sup> Norway promulgated a decree of 1935 which formally established its straight baselines.<sup>104</sup>

The ICJ took heavy account of the geographical circumstances in the case while setting out its guidance for the drawing of straight baselines.

The Judgment is based on the following principles. Firstly, where a coast is deeply indented, the baseline becomes independent of the low-water mark and can

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<sup>99</sup> See, for example, R. O'Keefe, “Palm-fringed benefits: island dependencies in the new law of the sea” (1996) 45 *ICLQ* 408, at pp. 411-413.

<sup>100</sup> [1951] ICJ Rep 116.

<sup>101</sup> *Ibid.*, p. 139.

<sup>102</sup> Churchill and Lowe (1999), p. 33.

<sup>103</sup> *Ibid.*, p.34.

<sup>104</sup> *Ibid.*, p.34

only be established by geometric construction.<sup>105</sup> As a result, the baselines are straight lines drawn between fixed points on the coast, providing a geometric base from which to establish a maritime zone. Secondly, the drawing of the baselines must “not depart to any appreciable extent from the general direction of the coast”.<sup>106</sup> Thirdly, the baselines must be drawn in such a way that the “sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters”<sup>107</sup>. Fourthly, it is possible to take into account “certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage”.<sup>108</sup> The fundamental economic interest at stake in the case taken into consideration by the ICJ, was fishing. Of interest is the fact that the ICJ’s approach was to take judicial notice of customary international rules which it considered to be relevant to the case, “with no attempt to offer independent proof”.<sup>109</sup>

Article 4 of the TSCZ 1958 incorporated the effect of the ICJ’s Judgment in the *Anglo-Norwegian Fisheries* case (1951), and Article 7 of LOSC 1982 follows the previous Convention with certain new provisions introduced. Straight baselines “may” be used “in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity” (Article 7(1), LOSC 1982). This use is however subject to a number of controls. Firstly, reflecting the *Anglo-Norwegian Fisheries* case (1951), straight baselines “must not depart to any appreciable extent from the general direction of the coast” (Article 7(3) LOSC 1982). Secondly, also reflecting the *Anglo-Norwegian Fisheries* case, “the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters” (Article 7(3) LOSC 1982). Thirdly, no straight baselines may be drawn to or from low-tide elevations unless either lighthouses or similar installations permanently above sea-level have been built upon

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<sup>105</sup> *Ibid.*, p.129.

<sup>106</sup> *Ibid.*, p.1 33.

<sup>107</sup> *Ibid.*, p. 133

<sup>108</sup> *Ibid.*, p. 133.

<sup>109</sup> A.A. D’Amato, A.A., ‘The Concept of Special Custom in International Law’, (1969) 63 *AJIL* 211, at p. 220. The tendency of the ICJ and arbitral tribunals to forego the search for the formal components of customary international law in deciding what constitutes it, has already been touched upon in this chapter.

them, or the drawing of baselines to and from such low-tide elevations “has received general international recognition” (Article 7(4) LOSC 1982). Fourthly, straight baselines may not be drawn so as to cut off another state’s territorial sea from the high seas (Article 7(6) LOSC 1982) or so as to cut off an Exclusive Economic Zone from the high seas (Article 7(6) LOSC 1982). Fifthly, if a state utilises straight baselines, they must be indicated on charts of a scale or scales adequate for ascertaining their position. Alternatively, there may be a list of geographical co-ordinates of points, specifying the geodetic datum. Such charts or lists of geographic co-ordinates are to be given “due publicity” (Article 16 LOSC 1982). The *Anglo-Norwegian Fisheries* case is also reflected in the provision that it is possible to take into account “economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage” (Article 7(5) LOSC 1982).<sup>110</sup>

Two geographical features which fall to be considered in the context of departure from the general rule on baselines, are bays and river mouths.

Firstly dealing with bays, prior to the TSCZ 1958, it was a principle of customary international law that a straight baseline could be drawn across the mouth of a bay, enclosing the waters thus contained as internal waters of a state. However, there were no clear criteria governing precisely how and in what circumstances this was to be done.<sup>111</sup> Article 7 of the TSCZ 1958 introduced important principles regarding this issue which are repeated almost exactly in the LOSC 1982.<sup>112</sup> The first question is whether a coastal feature is in fact a bay. A bay is described as “a well-marked indentation whose penetration is in such proportion to the width of its mouth so as to contain land-locked waters and constitute more than a mere curvature of the coast”. However, such an indentation is not a bay unless its area is at least as large as the semi-circle whose diameter is a line drawn across the mouth of that indentation (Article 10(2) LOSC 1982). In accordance with this principle, the area of indentation to be measured is the area lying between the low-water mark around the shore of the

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<sup>110</sup> Art 7(2) LOSC 1982 added new provisions on the straight baselines to be drawn in situations where there is a delta or other natural conditions rendering the coastline highly unstable.

<sup>111</sup> Churchill and Lowe (1999), p. 41.

<sup>112</sup> It is important to note that they do not apply to bays which have coasts belonging to more than one state (Article 10(1) LOSC 1982), or “historic” bays or situations where straight baselines are used (Article 10(6) LOSC 1982).

indentation and a line joining the low-water mark of its natural entrance points. Where, due to the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation (Article 10(3) LOSC 1982).

Once an indentation meets the measurement requirements of a bay, the baseline to be drawn depends on the distance in nautical miles between the low-water marks of the natural entrance points of the bay. Where the length does not exceed 24nm, a closing line (the baseline) may be drawn between these low-water marks, with the waters enclosed thus being considered internal waters (Article 10(4) LOSC 1982). Where the length exceeds 24nm, a straight baseline of 24nm is drawn within the bay in such a way as to enclose the maximum area of water possible with a line of that length (Article 10(5) LOSC 1982). With regard to the parts of the bay which remain unenclosed by any line, the baseline is the low-water mark unless an exception to the status quo exists.

With regard to river mouths, the LOSC 1982 provides that where a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks (Art 9, LOSC 1982).

International law governing the drawing of straight baselines is beset by a degree of ambiguity. For instance, it is far from clear what the criteria are for deciding that a coastline is sufficiently deeply indented and cut into for the provisions governing straight baselines to apply. Additionally, it is unclear what criteria are to be applied for determining that in a particular locality, there is a fringe of islands along the coast in its immediate vicinity. The manner in which the Gulf States have dealt with the issue of baselines will be examined in Chapter 4.<sup>113</sup>

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<sup>113</sup> See *Limits in the Seas*, No. 106, "Developing Standard Guidelines for Evaluating Straight Baselines", (Office of Ocean Law and Policy, US, August 31, 1987) for an attempt to provide guidelines for dealing with various circumstances when straight baselines may be claimed, and to aid in the assessment of their validity according to international law.

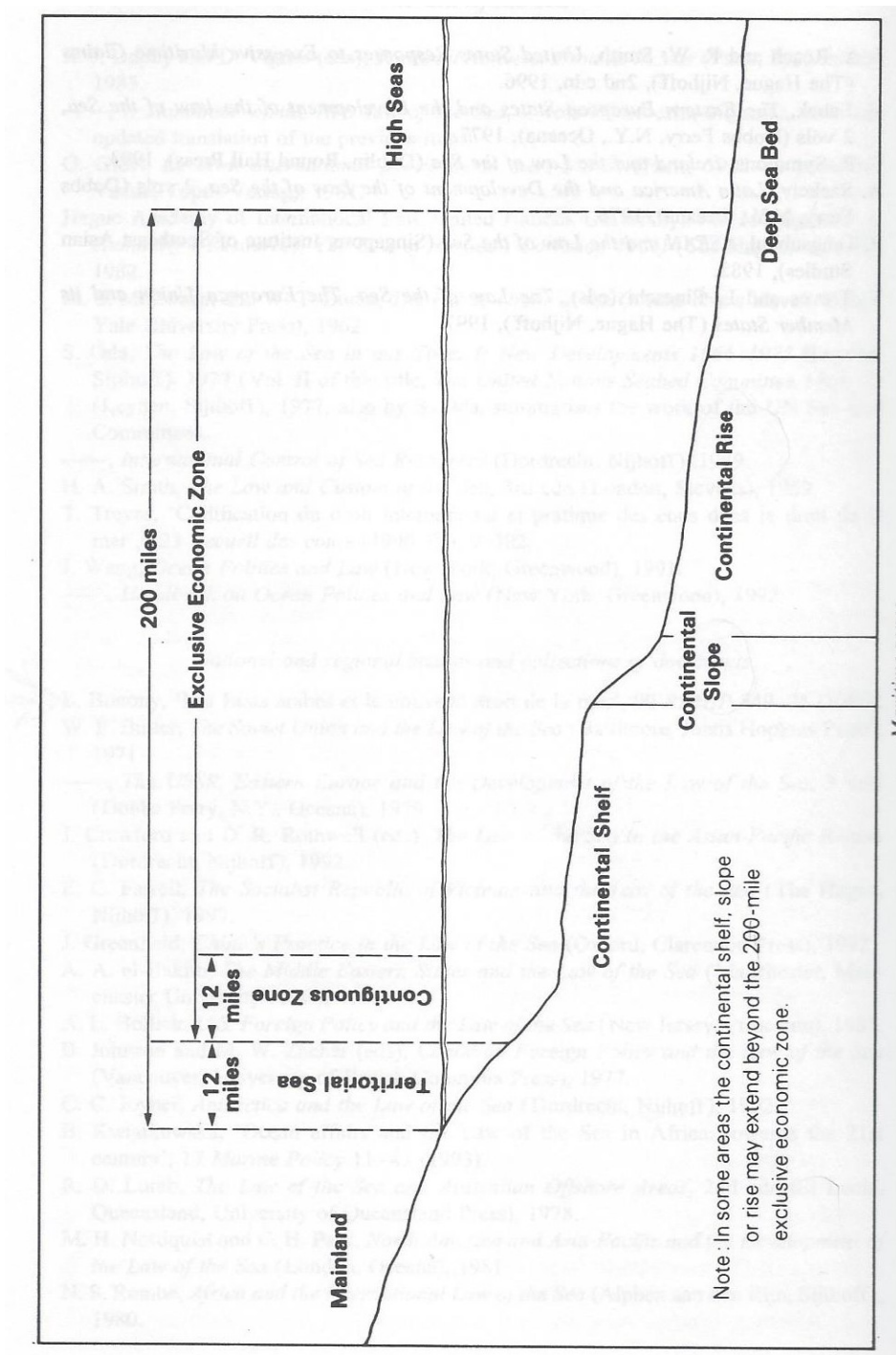


Figure 2: The maritime zones, from R.R. Churchill and A.V. Lowe, *The Law of the Sea* (3<sup>rd</sup> ed., Juris Publishing, Manchester University Press, Manchester, 1999), p. 30.

## **i. The territorial sea**

Historically, there was much controversy surrounding the breadth of the territorial sea, which is a belt of sea adjacent to the coast and extending beyond a state's internal waters. In the sixteenth and seventeenth centuries, vague criteria were applied, such as the limits of visibility.<sup>114</sup> However, state practice began to show evidence of a more standardised method, namely the point to which cannon shot could reach from the shore. This was a practice promoted by writers such as Grotius, and became known as the "cannon-shot" rule. The original aim of this rule was probably not to establish a uniform belt of territorial sea, but rather to reflect parts of the coast that were subject to state control due to actual cannons placed along those parts of the coast, in accordance with Dutch and Mediterranean state practice.<sup>115</sup> Another approach was that of the Scandinavian states which claimed sovereignty over fixed distances along the whole coastline, regardless of the presence of cannons on particular points on the coast.<sup>116</sup>

In 1782, Galiani promoted a three mile limit along the whole of the coast, rather than link control to the presence of cannons at particular locations on the coast. The reference to three miles was for the sake of simplicity, as cannon at the time had a range of under three miles.<sup>117</sup> From the end of the eighteenth century there were indications that a three mile limit was gaining acceptance by western maritime powers. Great Britain and the US accepted and propounded it, for the shorter it was, the more it supported their desire for free access to the high seas, which suited their maritime ambitions. Despite its existence during the nineteenth century and beyond, not all states accepted the three mile limit, with various states claiming a wider breadth. For instance, very shortly prior to the First World War, France, Italy, Russia, Spain and the Ottoman Empire all claimed greater distances from the shore which facilitated "the control of specific activities such as fishing or smuggling, within the overall limit of the actual range of coastal artillery".<sup>118</sup>

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<sup>114</sup> Churchill and Lowe (1999), p. 77.

<sup>115</sup> *Ibid.*, p.77.

<sup>116</sup> *Ibid.*, p.77-78.

<sup>117</sup> *Ibid.*, p. 78.

<sup>118</sup> *Ibid.*, p. 78.

Attempts were made between states to reach an international agreement as to the breadth of the territorial sea at the 1930 Hague Conference, as well as at UNCLOS I and II of 1958 and 1960 respectively. However, all these attempts failed. It is interesting that at UNCLOS II, a proposal for a 6nm limit failed to be adopted by only a single vote.<sup>119</sup> However, it is easy to see that opinions changed quickly, and while in 1960 the majority of states claimed less than 12 nm, towards the end of UNCLOS III, the majority claimed at least 12nm.<sup>120</sup> By the close of UNCLOS III, the consensus in support of a 12nm territorial sea was clear.<sup>121</sup> It is interesting that the newly independent states' promotion of 12 nm reflected their desire to bring more of an area under their sovereignty and to counteract the freedoms of the maritime powers. Such a trend was explicable in the light of technological advances which increased the types of vessels available to the maritime powers, as well as their uses of the sea, going beyond the traditional freedoms of navigation and fishing.

The LOSC 1982 finally and conclusively addressed the breadth of the territorial sea. Articles 3 and 4 deal with the breadth and outer limit of the territorial sea, and state that the breadth of the territorial sea is set at a limit not exceeding 12nm, measured from the baselines determined in accordance with the Convention, and that the outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea. Whether or not a 12nm territorial sea is a matter of customary international law is a question which may be answered in the affirmative, on the basis of the widespread acceptance of the limit amongst states. Churchill and Lowe conclude that the 12nm limit "is now firmly established in international law, and the practice, if not always the legislation, of all States is converging upon acceptance of that limit".<sup>122</sup> As will

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<sup>119</sup> *Ibid.*, p. 79

<sup>120</sup> *Ibid.*, p. 79.

<sup>121</sup> *Ibid.*, p. 79.

<sup>122</sup> *Ibid.*, p. 80, where the authors state, in considering the customary law status of the 12nm limit, that for parties to the LOSC 1982 and all other states recognising the legality of "territorial sea claims up to at least twelve miles, the twelve-mile limit will prevail. Wider claims (of which around fifteen still exist: see Appendix) will not be recognised, except as between States making or otherwise recognising such claims...In fact, several of the States that had previously claimed territorial seas in excess of twelve miles have pulled back their claims and adopted the twelve-mile limit." The examples of Argentina, Brazil, Ghana and Senegal are given. The authors then state that "[i]n theory, the few non-LOSC States making territorial sea claims narrower than twelve miles would not be bound even by the twelve-mile claims in so far as they have persistently objected to them. However, since the United States announced in 1983 that it would respect claims of up to twelve miles which accord to other States their rights and freedoms under international law – chiefly rights of passage – it seems highly unlikely that there is any State in the position of a persistent objector in this matter." The reference to



be seen in Chapter 4, a number of Gulf States legislated for a 12 nm territorial sea prior to the 1970s with the remainder of the Gulf States following them later in time.

Sovereignty over the seabed and subsoil in the territorial sea was accepted at the Hague Conference 1930, and reiterated in Article 2, TSCZ 1958. Article 2(1), LOSC 1982 confirms a state's sovereignty over a belt of sea adjacent to its coast known as the territorial sea, and Article 2(2) confirms that this sovereignty extends to the air space above, as well as the sea- bed and subsoil below it.<sup>123</sup>

Article 13(1) LOSC 1982 states that where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea. According to Article 13(2), where such an elevation is wholly outside the territorial sea of the mainland or of an island, it has no territorial sea of its own.

## **ii. The contiguous zone**

The contiguous zone is a zone contiguous to the territorial sea in which states have a limited range of powers to enforce certain national laws such as those pertaining to immigration, customs, and fiscal matters. Under both TSCZ 1958 and LOSC 1982, a state does not automatically become entitled to the jurisdiction conferred by the contiguous zone, but must proactively choose to claim it.

The contiguous zone has its origins in legislation such as Great Britain's "Hovering Acts" which were enacted to deal with foreign smuggling ships hovering within eight leagues (twenty four miles) from the domestic shore.<sup>124</sup> The notion of a contiguous zone which would allow for the exercise of jurisdiction over matters such as customs and sanitation gained interest amongst states, although no such zone was agreed upon in the 1930 Hague Conference. The contiguous zone was agreed upon

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the US's announcement in 1983 is stated by the authors to be the Presidential Proclamation of 10 March 1983, 22 ILM 461 (1983) in their note 16. The reference to the US by Churchill and Lowe is of interest in this discussion of customary law, as it has declined to sign the LOSC 1982, and therefore adds to the evidence that the 12nm limit has indeed moved into customary law.

<sup>123</sup> An exception to such sovereignty is the right of foreign ships to innocent passage through a state's territorial sea (see Article 17, LOSC 1982).

<sup>124</sup> See Churchill and Lowe (1999), p. 132.

at the 1958 Geneva conference, and provision for it was made in Article 24 TSCZ 1958. In essence, Article 33(1) LOSC 1982 repeats Article 24, and states that in a zone contiguous to its territorial sea, a state may exercise the control necessary to:

- (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

With regard to the breadth of the contiguous zone, initially, under Article 24(2) TSCZ 1958, the zone could not extend more than 12nm from the baselines, or, under Article 24(3), unless there was agreement to the contrary between states, farther than the median line equidistant from the nearest points on the baselines where two states were either adjacent or opposite to each other. As stated earlier, the breadth of the territorial sea was not agreed upon at the 1958 conference, and this meant that in the years afterwards, states would claim various territorial sea and contiguous zone limits up to a long stop limit of 12nm. However, once the 12nm territorial sea limit was agreed upon, UNCLOS III extended the breadth of the contiguous zone, and so Article 33(2) 1982 LOSC states that it may not extend beyond 24nm from the baselines from which the breadth of the territorial sea is measured. This allows a 12nm zone beyond the 12nm territorial sea.

### **iii. The continental shelf**

In geological terms, the continental shelf is part of the seabed adjacent to the coast. In legal terms, it begins where the territorial sea ends. It is part of a state's entitlement without a need to expressly claim it. As seen in Figure 2, there are three sections, one of which is the continental shelf, which constitute the continental margin. The continental margin is separate from the deep ocean floor. The first section nearest the coastline is the continental shelf itself, which is commonly characterised by a relatively gentle slope extending from the coastline. This can be rich in oil and gas deposits. The second section, extending from the shelf, is the continental slope which is characterised by a steeper slope. Thirdly, it is common to find an area known as

the continental rise which slopes more gradually and is comprised mainly of sediments. Beyond the continental rise is the ocean floor.

The legal, as opposed to the geological, concept of the continental shelf originates in the Truman Proclamation of 1945.<sup>125</sup> In that pronouncement, the US referred to the continental shelf as “an extension of the land mass of the coastal State and thus naturally appurtenant to it”, and claimed “the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control”. It was also made clear that “the character as high seas of the waters of the continental shelf and the right to their free and unimpeded navigation are in no way thus affected”.

The Truman Proclamation was a natural consequence of the fact that in geological terms, the US has a true geological continental shelf. Nevertheless, the Proclamation’s definition of the legal concept of the continental shelf had a fundamental and wide-ranging influence on other states, regardless of their own geological position, in developing their own jurisprudence on the continental shelf, displaying a relatively quick acceptance of the notion and its effects as a general rule of international law. However, the claims to the continental shelf varied and early state practice could not be said to be consistent. For example, Lord Asquith, acting as arbitral umpire in *Petroleum Development Ltd v Sheikh of Abu Dhabi* (1951), on reviewing the doctrine of the continental shelf since the publication of the Truman Proclamation 1945, noted, *inter alia* the Proclamations of the Gulf states which broadly conformed with the wording of the Truman Proclamation 1945, as well as the “more ambitious” claims of Latin and Central American countries which were claims to actual sovereignty over the continental shelf, such as Argentina in 1944, Mexico in 1945 and Chile in 1947. He further noted some claims, such as those of Chile, El Salvador, Honduras and Costa Rica were not even limited to the continental shelf but extended to a zone 200nm from the mainland.<sup>126</sup> He found state practice to be so inconsistent by 1951, that he concluded that “in no form can the doctrine [of the continental shelf] claim as yet to have assumed hitherto the hard lineaments or

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<sup>125</sup> Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 28 September 1945, 10 Fed. Reg. 12303 (2 October 1945).

<sup>126</sup> (1951) 18 ILR 144, pp. 153-4.

the definitive status of an established rule of International Law.”<sup>127</sup> However, by the time of the 1958 Geneva Conference, the doctrine of the continental shelf was established in customary international law.<sup>128</sup> Thus it is an example of how international law can adjust quickly and effectively to new ideas and changing circumstances. The wording of the Truman Proclamation had been closely collaborated upon by the US and British governments, with the aim that the Gulf States would follow its lead when they issued their own legislation on the matter of the continental shelf.<sup>129</sup> Other states, including the Gulf States, followed with similar claims in order to benefit from the exploitation of oil, gas and mineral resources in the continental shelf.<sup>130</sup>

a. The CSC 1958

This was an important milestone in the development of the continental shelf, because it was the first multilateral treaty to deal with the continental shelf as a legal concept. Its importance for this study lies in the fact that, despite none of the Gulf States having ratified the CSC 1958, it embodied the international law on the topic of the continental shelf at the time when several of the bilateral agreements on the delimitation of the continental shelf between Gulf States were entered into, and which still exist today.

Article 1 sets out a legal definition of the continental shelf as comprising:

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<sup>127</sup> *Ibid.*, p. 155. However, in contrast to this view, some commentators have expressed the view that the claim to the continental shelf in the Truman Proclamation quickly moved into customary law, the law relating to a state’s claims in the continental shelf took the form of what has been referred to as “instant” customary law; see for example H. Lauterpacht, “Sovereignty over Submarine Areas”, (1950) 27 *BYIL* 377, and M.P. Scharf, *Customary International Law in Times of Fundamental Change. Recognizing Grotian Moments* (Cambridge University Press, Cambridge, 2013), Chapter 5 entitled “The Truman Proclamation on the Continental Shelf” at pp. 107-122.

<sup>128</sup> Churchill and Lowe (1999), p. 145.

<sup>129</sup> J.C., Wilkinson, *Arabia’s Frontiers: The Story of Britain’s Boundary Drawing in the Desert*, (I.B. Tauris & Co Ltd, London, 1991, reprinted New York, 1993), p. 238.

<sup>130</sup> Following the Truman Proclamation of 1945, Gulf States issued legislation regarding the resources of the sea bed and subsoil contiguous to their coasts. Saudi Arabia was the first State to issue such legislation in the form of the Royal Pronouncement of 28 May 1949. The following States also issued proclamations declaring rights to contiguous subsoil and seabed areas in 1949 as follows: Bahrain on 5 June, Qatar on 8 June, Abu Dhabi on 10 June, Kuwait on 12 June, Dubai on 14 June, Sharjah on 16 June, Ras al-Khaimah on 17 June, Ajman on 20 June, and Umm al-Qaywayn in June, it being unclear on what date. Iran issued similar legislation on 19 June 1955. The Gulf legislation on the continental shelf following the Truman Proclamation 1945 is examined in Chapter 5.

the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas...[and] the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Clearly, there is a limit dependent upon depth or, in the alternative, exploitability. This meant that the legal conception was not limited exclusively to the geographical conception of the continental shelf, and therefore could allow for continental shelves to exist in shallow basins such as the Gulf. Article 1 was a statement of customary law.<sup>131</sup> This explains why, as will be seen in Chapter 5, a number of the Gulf States adopted this definition in their national legislation despite not being parties to the CSC 1958.

Article 2 makes clear that the state exercises “sovereign rights for the purpose of exploring it and exploiting its natural resources” over the continental shelf. In other words, a state’s rights over the shelf vest in it *ipso jure*, without the need to declare them.

Article 1, CSC 1958 left the breadth of the continental shelf effectively dependent on the ability of states to extract resources from the continental shelf. However, technology soon advanced to the stage that there was little or no limit to such capability on the part of states, leaving the limit of the continental shelf potentially open-ended.

b. The LOSC 1982

In contrast, LOSC 1982 establishes a new definition designed to set a definite limit to the breadth of the continental shelf. Article 76(1), LOSC 1982 establishes a legal definition of a state’s continental shelf, namely:

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<sup>131</sup> See *North Sea Continental Shelf* cases (1969), Sep. Op. Judge Ammoun, pp. 103-6, paras. 4-7 who referred to the Gulf States’ Proclamations on the continental shelf as well as the legislation of other states, at p. 104, para. 5 as support for his view that Article 1 CSC 1958 was part of customary international law.

the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Thus, instead of the depth being the crucial factor in Article 1, CSC 1958, here there is a limit set according to breadth.

The continental shelf as defined legally in Article 76(1) extends over a greater area than the geological continental shelf, which itself is only one of three elements which make up the geological continental margin, the other two being the continental slope and continental rise. The continental margin is defined in Article 76(3) as comprising the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof. Again, like Article 1, CSC 1958, the legal definition of the continental shelf is not limited to the geological definition.

Article 76(2) states that the continental shelf of a coastal State shall not extend beyond the limits provided for in Article 76(4) – (6), although pursuant to Article 76(10), the provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Article 76(4) sets the outer limit of the legal continental margin where the 200 nautical mile limit does not apply, in either of two ways. It states as follows:

(a)...

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

It is apparent that the application of Article 76(4) depends on locating the foot of the slope.

Article 76(5) defines the absolute limits of the legal continental shelf as established under Article 76(4)(a)(i) and (ii). In most scenarios to be encountered, there will be a choice between a limit of 350 nautical miles from the baselines, or 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres. However, as seen in Article 76(6), there is no choice in the case of submarine ridges. Article 76(6) states as follows:

Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

Article 76(7) provides that where a state's continental shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, it shall delineate the outer limits of its continental shelf by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by co-ordinates of latitude and longitude. It is apparent that a state has some degree of choice as to the location of the fixed points according to the wording of the Article, in order to maximise the favourability of the result.

Article 77(1) states that a state has "sovereign rights" over the continental shelf "for the purpose of exploring it and exploiting its natural resources". Article 77(3) makes clear that such rights are inherent in a state, as they 'do not depend on occupation, effective or notional, or on any express proclamation'. It is notable that those rights do not affect the superjacent waters.

#### iv. The exclusive economic zone (“EEZ”)

The EEZ is a sea zone within which a state may claim a body of rights relating to the exploitation of natural resources, as well as associated rights of jurisdiction. Third states also have certain freedoms within a state’s EEZ. This zone is measured at 200nm from the baselines from which the territorial sea is measured. Therefore, the continental shelf extends at least as far as the EEZ.

The EEZ made its first appearance in conventional form in the LOSC 1982. However, historically, a number of states claimed exclusive fishing rights in areas which came to be known as Exclusive Fishing Zones (EFZs) in areas beyond their territorial sea.<sup>132</sup> This provided the basis and impetus for what was to become known as the EEZ. The great majority of states which currently claim an EEZ did so well before the 1982 Convention came into force, many of them in the late 1970s when UNCLOS III was still proceeding and in fact it is generally recognised that the EEZ became a part of customary international law before the 1982 Convention came into force. For example, in the *Tunisia/Libya* case (1982), the ICJ observed that the EEZ had become accepted as customary international law.<sup>133</sup> Therefore one of the purposes of the LOSC 1982 was to deal with and regularize increasing claims by states to EFZs and EEZs.

An interesting feature of claims to the EFZ/EEZ is that its roots lie in the desire of developing states to increase their control over resources in the waters near their coasts, in particular fish, in the face of exploitation by long-distance fishing fleets of the maritime powers. This desire was the basis of claims of Latin American and African states to very broad territorial seas, sometimes extending to 200nm, and fishing zones. These claims created a momentum which gradually received increasing support from other developing countries. By the time UNCLOS III had begun, most developing states had pledged their support for the concept of the

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<sup>132</sup> Most of the Latin American States promoted the idea of a 200nm EEZ, particularly in the 1970s. A number of developed States such as Germany, Japan, Canada and the US claimed a 200nm EFZ in the late 1970; these claims were subsequently changed to claims to an EEZ following the existence of the 1982 Convention. See Churchill and Lowe (1999), pp. 160-1.

<sup>133</sup> [1982] ICJ Rep 18, para. 100. Additionally in *Libya v Malta* [1985] ICJ Rep 13 at para.34, the ICJ stated that the EEZ is shown by state practice to have become part of customary law



EEZ.<sup>134</sup> As will be seen in Chapter 5 of this study, Gulf States also followed these developments, and issued national legislation claiming EFZs/EEZs.

Part V of LOSC 1982 sets out the regime appertaining to the EEZ. Article 55 states that the EEZ is an area adjacent to and beyond the territorial sea, and Article 57 confirms its breadth as a maximum of 200nm from the baselines from which the breadth of the territorial sea is measured. Amongst other provisions in Part V, Article 56, *inter alia*, refers to the rights, jurisdiction and duties of the coastal state in the EEZ. Article 56(1)(a) states that in the EEZ the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, living or non-living, of the waters superjacent to the sea-bed and its subsoil, and also in relation to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. Article 56(1)(b) states that the state also has jurisdiction as provided elsewhere in the Convention in relation to (i) the establishment and use of artificial islands, installations and structures; (b) marine scientific research, and (iii) protection and preservation of the marine environment. Article 58 refers to the rights and duties of other states in the EEZ, such as freedom of navigation, overflight, and the laying of submarine cables and pipelines.

## **Islands**

Having touched upon maritime zones by way of a brief overview, it is useful at this point to refer to the question of the maritime zones generated by islands, which feature prominently in the Gulf Sea. Islands are entitled to their own territorial sea, contiguous zone, continental shelf, and EEZ.

Article 10(2), TSCZ 1958 states that the territorial sea of an island is measured in accordance with the articles of that Convention. Article 1(b), CSC 1958 provides that islands are entitled to their own continental shelf. Nowhere is an island defined in that Convention. However, there is such a definition in Article 10(1) of TSCZ

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<sup>134</sup> See Churchill and Lowe (1999), pp. 160-1. The concept of the EEZ was proposed for the first time by Kenya's representative to the Asian-African Legal Consultative Committee in January 1971 and to the U.N. Sea Bed Committee in 1972. See Churchill and Lowe (1999), p. 160.

1958, namely “a naturally-formed area of land, surrounded by water, which is above water at high tide”. This definition is reflected in LOSC 1982, and so it is highly arguable that a different definition was not intended to operate in CSC 1958.

Article 121(2), LOSC 1982 states that the territorial sea, contiguous zone, exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of the LOSC 1982 applicable to other land territory. An exception to this is given in Article 121(3), LOSC 1982 which states that rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.<sup>135</sup>

### **Delimitation**

Delimitation is the process of establishing the boundary between the maritime zones of two or more states. Delimitation of a boundary is needed where neither state is able to claim the full area of the zone which it would ordinarily be entitled to, because it is impinged upon by the maritime zone of another state or states.

#### **i. The territorial sea**

Article 15 LOSC 1982, which in essence repeats what was contained in Article 12 TSCZ 1958, states the general rule, that where the coasts of two states are opposite or adjacent to each other, failing agreement between them to the contrary, neither state is entitled to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured. However, this is said not to apply where it is necessary, by reason of historic title or other special circumstances, to delimit both states' territorial seas in a way at variance therewith.

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<sup>135</sup> As referred to earlier in this chapter, this provision is characterized by vagueness.

<sup>136</sup> The corresponding delimitation provision in CSC 1958 influenced Article 12 TSCZ 1958.

It is apparent that the rules contained in Article 12, TSCZ 1958, which evolved into Article 15, LOSC 1982, reflect customary international law in respect of both opposite and adjacent states.<sup>137</sup> In this regard, it is useful to note, for the purposes of this study, the *Dubai/Sharjah Border Arbitration* (1981), which, in delimiting the territorial sea boundary between both Emirates which are adjacent to each other, the tribunal, applying customary international law, drew “a lateral equidistance line from the coastal terminus which divides the two territorial seas according to the principles laid down in” Article 12 TSCZ 1958, considering the line drawn to be “equitable”.

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## **ii. The contiguous zone**

Article 24(3), TSCZ 1958 states that where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of the two States is measured. However, Article 33, LOSC 1982, which deals with the contiguous zone, makes no provision for delimitation of the contiguous zone as between adjacent or opposite states. The provision for an EEZ in the LOSC 1982 means that the contiguous zone is a part of the EEZ, and therefore Article 74, LOSC 1982 governing delimitation of the EEZ would also apply, whether or not, it seems, an EEZ is actually claimed.

## **iii. The continental shelf, the exclusive economic zone (‘EEZ’) (or exclusive fishery zone, ‘EFZ’), and the single maritime boundary**

With regard to the continental shelf, as early as 1945, the Truman Proclamation had referred to delimitation of the continental shelf, stating that where the US continental shelf extends to the shores of another state, or is adjacent with another state, the

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<sup>137</sup> P. Weil, for example, has stated that the rule contained in these provisions “is generally regarded as having become part of customary law for the purposes of territorial sea delimitation”, see *The Law of Maritime Delimitation—Reflections* (Grotius Publications Ltd, Cambridge, 1989), p. 136. See also Churchill and Lowe (1999), pp. 182-183.

<sup>138</sup> 91 *ILR* 543 at 663. Churchill and Lowe (1999) state at p. 183 that this shows that the tribunal “would seem thereby to have equated the customary and the conventional rules”.

boundary “shall be determined by the United States and the State concerned in accordance with equitable principles”.

Article 6 (1) and (2), CSC 1958 confirm that where the same continental shelf is adjacent to the territories of two or more States whose coasts are either opposite or adjacent to each other, the boundary of the continental shelf shall be determined by agreement between them. However, in the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the equidistance line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.<sup>139</sup> The wording of the provision may therefore suggest that agreement is given priority as a means of resolution. In other words, only if there is an absence of agreement can a boundary be delimited by the equidistance line, with the special circumstances provision operating where appropriate. A crucial aspect to note is that special circumstances are nowhere defined in the CSC, and neither is any indication given of what alternative boundary might be appropriate should special circumstances be found to exist.

With regard to delimitation of the continental shelf, proposals at UNCLOS III were mainly divided into two opposing approaches amongst participating states: firstly, those advocating equidistance (with an exception for special circumstances) and secondly, the application of equitable principles. The resulting provision, Article 83(1), LOSC 1982, was a compromise following difficult negotiations, and is generally considered as having little practical effect in that it leaves a great deal open and undefined. It reads as follows:

The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

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<sup>139</sup> Article 6(1) refers to the median line in relation to states with coasts opposite to each other, while Article 6(2) refers to the line being drawn according to the principle of equidistance in relation to states with coasts adjacent to each other. There is no substantive difference between a median and equidistance line as confirmed by the ICJ in *Romania v Ukraine* [2009] ICJ Rep 62, where it confirmed at para. 116 that “[n]o legal consequences flow from the use of the terms “median line” and “equidistance line” since the method of delimitation is the same for both.”

Article 74(1) LOSC 1982 in respect of the delimitation of the EEZ is in identical terms. Neither Article makes reference to any principles or methods of delimitation to be applied. Rather, in somewhat vague terms, it is provided that in seeking an agreement, international law is to be applied, as referred to in Article 38 of the Statute of the International Court of Justice 1945.<sup>140</sup> However, “an equitable solution”, being the goal of delimitation, is a concept which has arisen in the case law, and which is of assistance when applying Articles 74(1) and 83(1).<sup>141</sup>

As has already been seen, the continental shelf and EEZ cover the same 200nm area. Article 74(1) LOSC 1982 utilises the same wording as Article 83(1) in respect of delimitation of the EEZ, and the above observations in respect of their vagueness also apply. At UNCLOS III, there was a recognition that it would be appropriate for continental shelf and EEZ boundaries to coincide, which explains the same wording in Article 74(1) and Article 83(1). Further, in the case law, the single maritime boundary developed, which is essentially a boundary between two or more maritime zones of states, for example a single boundary line delimiting both the continental shelf and the EEZ between states. It is a convenient method for solving delimitation issues.

As has been made clear, however, in the case law, which is examined below, the fact that these two LOSC 1982 provisions are the same, may create difficulties, in that the factors appropriate to take into account when delimiting the continental shelf may not be equally appropriate when delimiting the EEZ and vice versa. This was clear for example in the *Gulf of Maine* case (1984) which for the first time drew a single maritime boundary between the continental shelf and 200nm exclusive fishery zones (EFZs) of the US and Canada. The Chamber of the ICJ decided that the CSC 1958, to which both States were Parties, was not relevant to the drawing of a single maritime boundary, as it did not govern the delimitation of the water column (the EFZ) above the continental shelf.<sup>142</sup> The Chamber emphasised the need to be aware of factors which, while relevant to the delimitation of the continental shelf, for

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<sup>140</sup> This provision has been referred to at the start of this chapter.

<sup>141</sup> It should be noted that Articles 74(1) and 83(4) LOSC 1982 clarify that where there is an agreement in force between the states concerned, questions relating to the delimitation of the EEZ and continental shelf respectively shall be determined in accordance with the provisions of that agreement.

<sup>142</sup> [1984] ICJ Rep 246, at para. 121.

example geological factors, are difficult to regard as relevant to the superjacent waters of EEZ or EFZ, and conversely ecological factors are difficult to consider relevant to the delimitation of the continental shelf. Criteria relevant to delimitation of only one of these zones should be ignored.<sup>143</sup> The Chamber stated that geographical factors were most likely to be relevant to the delimitation a single maritime boundary between the continual shelves and fishing zones of both states.

It has already been observed that customary international law on delimitation of the continental shelf and the EEZ has been actively developed by case law of the ICJ and arbitral tribunals and it is to the case law that this thesis now turns in the next chapter.

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<sup>143</sup> Paras. 192-5

## **Chapter 3**

### **Case Law on Maritime Boundary Delimitation in the International**

#### **Law of the Sea**

##### **Introduction**

Case law on the issue of the delimitation of maritime boundaries has been an important feature of the work of the ICJ and arbitral tribunals, demonstrating prolific activity in this field of decision-making. The significance of such decisions for the delimitation of the continental shelf and EEZ has been referred to in the previous chapter, where it was shown that it may be said that case law reflects or indeed constitutes customary international law on the maritime delimitation.

This chapter attempts to give a broad overview of the development of the case law on delimitation with particular reference to the continental shelf and also the EEZ, with a consideration of the general principles which currently could be said to be applicable to delimitation. The field of maritime boundary delimitation is a longstanding arena for extensive and interesting theoretical debate, and therefore it is important to make clear that due to limitations of space this current chapter cannot be an exhaustive critical analysis of the case law nor an attempt to present a theoretical approach to understanding the case law. Rather, it is an attempt to present an extremely practical examination of the fundamental aspects of the case law for the purpose of effecting the aims of this study. As a result, it focuses on the methods of delimitation and the most important relevant factors which influence delimitation. It is clear that Gulf maritime boundary delimitation cannot be understood without such an examination.

However, before beginning a discussion of the cases, it is helpful to explain a number of the basic concepts which feature in maritime boundary delimitation, and

in particular in the case law to be discussed in this chapter, and this prior explanation will assist in a greater understanding of the delimitation decisions in the case law.<sup>144</sup>

### **The main methods of delimitation**

As well as the equidistance line, there are a number of other possible delimitation lines. The starting point is to look at the geographical context in which the delimitation is to be effected, in particular the relevant geographical area.<sup>145</sup> This includes the relevant coastlines. While geographical factors are important, it is the application of rules of international law and equitable principles which determine the relevance and weight of geographical features.<sup>146</sup>

#### **i. The equidistance line**

The principle of equidistance and basic legal principles governing baselines have already been referred to in Chapter 3. As has already been seen, Article 12 TSCZ 1958, and Article 6 CSC 1958 which deal with delimitation of the territorial sea and the continental shelf respectively, both define equidistance as the line every point of which is equidistant from the coastlines from which the breadth of the territorial sea of each of the two states is measured.<sup>147</sup> In general, by way of general definition, an equidistance line, otherwise known as a median line, is “[a] line composed of relatively short segments connecting points that are equidistant from the normal baselines, or from claimed (or assumed) baselines from which the breadth of the territorial sea is measured.”<sup>148</sup> It may be said that there are three forms of equidistance

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<sup>144</sup> As will become clear in due course, many of these basic concepts of delimitation also feature in delimitation in the Gulf in various ways, as will be clear from Chapters 6 and 7.

<sup>145</sup> *St. Pierre and Miquelon Arbitration* (1992) 31 ILM 1145, para. 25.

<sup>146</sup> *Ibid.*, para. 24.

<sup>147</sup> It will be noted that Article 6 CSC 1958 refers to a “median line” in respect of delimitation of the continental shelf between opposite states, and a line determined by the application of the “principle of equidistance” in relation to delimitation of the continental shelf between adjacent states. There is no distinction between a median line and an equidistance line.

<sup>148</sup> This definition is taken from the glossary of terms in J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries* Vol. I (Martinus Nijhoff, Dordrecht, 1993), p. xix.



line: a strict, a simplified and a modified equidistance line.<sup>149</sup> These are dealt with below.

A line which is strictly equidistant between two points is the perpendicular bisector of the line joining the two points, and therefore a true equidistance line is “a series of segments of perpendicular bisectors of straight lines joining the nearest points on the coasts of the parties”.<sup>150</sup> Therefore, the line follows a course which reflects the continual change in the relationship between the nearest points on each parties’ coastlines.<sup>151</sup> For a boundary to be a true equidistance line, each point along the whole boundary must be equidistant from two points comprising one point on each coast, while the turning points (those points which are not the terminal points) must be equidistant from three points (two points on one coast, and one point on the other coast).<sup>152</sup> A good illustration of this is Figure 3 which shows an equidistance line between the opposite coasts of two states following a number of turning points along the line. Figure 4 demonstrates an equidistance line between adjacent states. It can be seen that a strict equidistance line may be complicated with numerous short straight line segments which reflect coastal features.

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<sup>149</sup> This categorisation appears in L. Legault and B. Hankey, “Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation”, in Charney and Alexander, Vol. I (1993), p. 203, at pp. 206-208 and also in V. Prescott and C. Schofield, *The Maritime Political Boundaries of the World* (2<sup>nd</sup> ed., Martinus Nijhoff Publishers, Leiden, 2005), pp. 224-227.

<sup>150</sup> Legault and Hankey (1993), p. 207

<sup>151</sup> *Ibid.*, p. 207.

<sup>152</sup> See P.B. Beazley, *Maritime Limits and Baselines. A Guide to their Delineation*, 3<sup>rd</sup> ed., (Hydrographic Society, Dagenham, 1987), p. 38, and *Limits in the Seas*, No. 67, “Continental Shelf Boundary: Iran-Oman” (Office of the Geographer, US, January 1, 1976), p. 5.

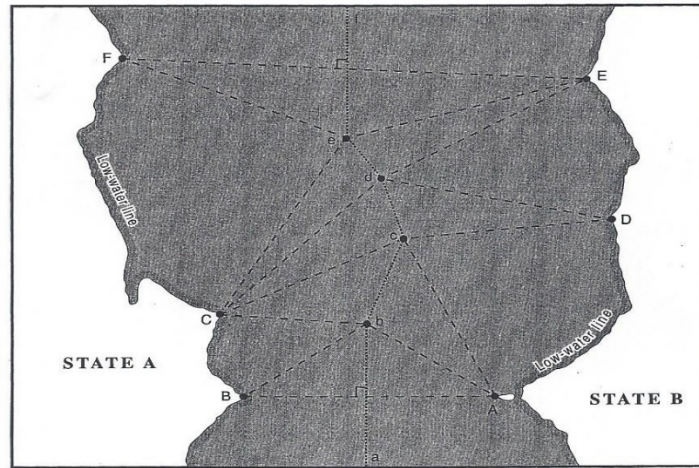


Figure 3: Equidistance between opposite coasts, from V. Prescott and C. Schofield, *The Maritime Political Boundaries of the World* (2<sup>nd</sup> ed., Martinus Nijhoff Publishers, Leiden, 2005), p. 577, fig.10.1.

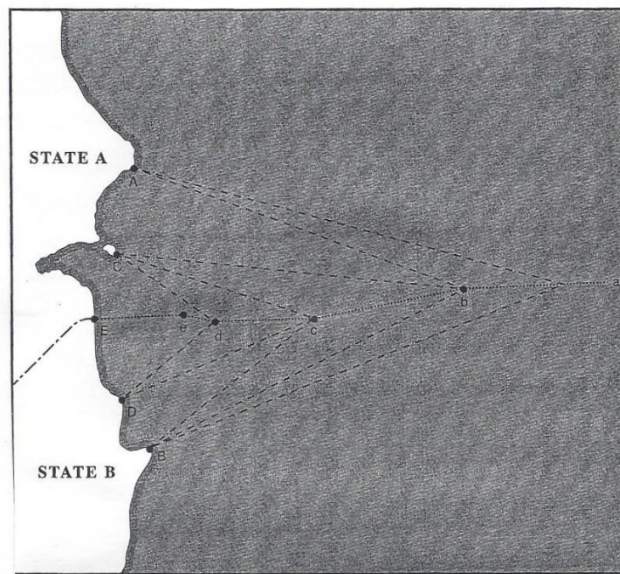


Figure 4: Equidistance between adjacent coasts, from V. Prescott and C. Schofield, *The Maritime Political Boundaries of the World* (2<sup>nd</sup> ed., Martinus Nijhoff Publishers, Leiden, 2005), p.578, fig.10.2.

A simplified equidistance line is one which seeks to militate against the complexity of the strict equidistance line. The simplified version reduces the number of turning

points, and therefore decreases the number of straight line segments, at the same time increasing their length. A common feature of this kind of line is that both states often exchange equal areas, in keeping with the intention to keep matters simplified.<sup>153</sup>

A modified equidistance line is made up of straight line segments connecting points which are not strictly equidistant from the baselines of the territorial sea, because particular coastal features, such as islands, have not been utilised, or have been given a reduced effect.<sup>154</sup> Therefore, this line departs more from strict equidistance than does the simplified equidistance line. It may result in a line which in fact has little resemblance to equidistance, and instead of exchanging equal areas between the parties, which is a feature of simplified equidistance, it generally allocates a maritime area to one party without any such exchange.<sup>155</sup>

It is useful at this point to refer to the features of equidistance when used in the case of opposite states, and how this can differ when it is used between adjacent states. As identified by the ICJ in *North Sea Continental Shelf* cases (1969), while stating that an equidistance line generally produced an equitable result in the case of opposite states, it stated that this was often not the case between adjacent states. This is because a feature on the coast of one or the other of the coasts, such as concavity, convexity or a protrusion, has an effect on an equidistance line which is amplified as the boundary extends seaward, thus having a disproportionate effect.<sup>156</sup> In that case in particular, it was noted that if an equidistance line was used between Germany and other states, this would lead to inequity. This is because the concave coastline of Germany, in combination with the convex coastlines of the other states on either side of it, would create a situation where the lateral converging equidistant boundaries of the states on either side would cause Germany to become “shelf-locked”. This effect can be seen from Figure 5, a diagram from the ICJ’s Judgment which explains the inequitable effect. A cut-off effect is created, effectively causing an equidistance line to swing out across the coast of one of the parties, cutting off that state from the continental shelf lying in front of its coasts. Case law makes clear that a cut-off effect

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<sup>153</sup> Legault and Hankey (1993), p.207.

<sup>154</sup> *Ibid.*, p.208. A discussion of which factors may operate to modify a strict equidistance line will follow later in this chapter in relation to case law, and also in Chapters 6 and 7 in respect of delimitation in the Gulf.

<sup>155</sup> *Ibid.*, p. 208.

<sup>156</sup> [1969] ICJ Rep. 3, para. 89.

is to be avoided. The ICJ stated that an equidistance line between opposite states was less likely to create inequity.<sup>157</sup> This observation was cited with approval in subsequent case law.<sup>158</sup>

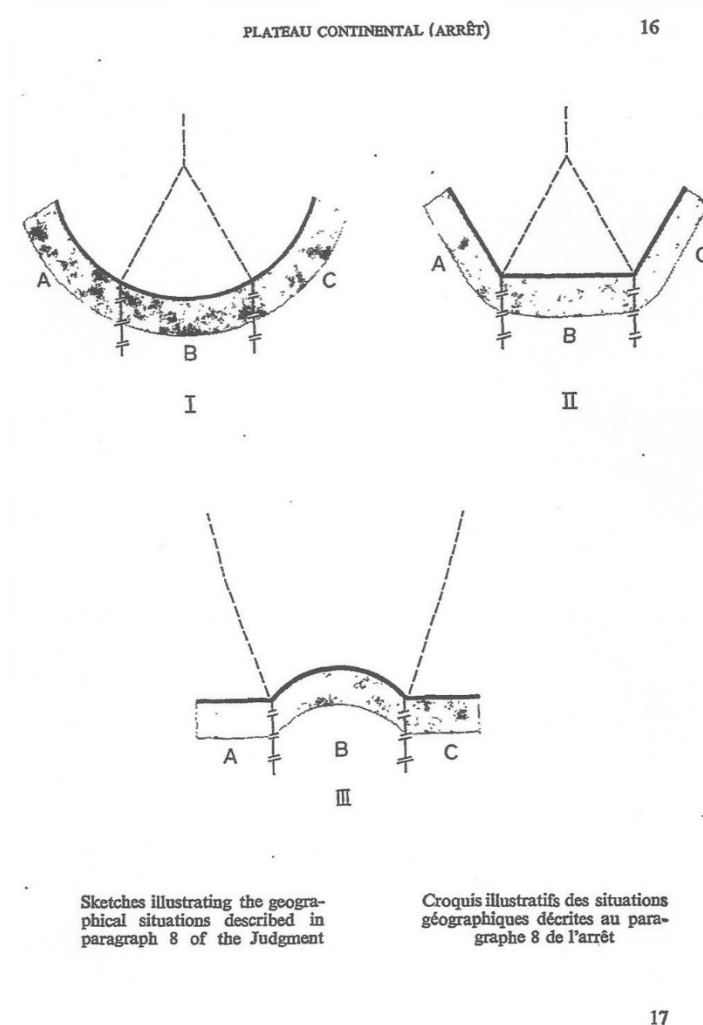


Figure 5: Diagram from *North Sea Continental Shelf* cases [1969] ICJ Rep 3 at p. 16 showing the effect of concave coasts on an equidistance line.

The different effects between adjacent and opposite coasts was explained by the ICJ in *Libya/Malta* (1985), where it was stated that in relation to the former, “any

<sup>157</sup> Paras. 57, 59.

<sup>158</sup> For example, see *Anglo-French Arbitration* (1977) 18 ILM 39, para. 95.

distorting effect of a salient feature might well extend and increase through the entire course of the boundary”, while in respect of the latter:

the influence of one feature is normally quickly succeeded and corrected by the influence of another, as the course of the line proceeds between more or less parallel coasts.<sup>159</sup>

Another example of the recognition of this distinction is the case of *Guinea/Guinea Bissau* (1985), where the Arbitral Tribunal decided against options based on an equidistance line between the adjacent coasts of the Parties, in a situation where taken together the coasts of both were concave, due to the exaggerated importance such a line would give to certain insignificant features of the coastline and which would produce a cut-off effect causing the states to lose maritime areas opposite and near to their coasts.<sup>160</sup> However, it should also be noted that the equidistance line has, in more recent case law, become established as the provisional starting point for delimitation of the continental shelf or the EEZ or in the case of a single maritime boundary in cases of states with both opposite and adjacent coasts. This will be dealt with later in this chapter.

It should also be noted that in any given delimitation situation, two states can be opposite to each other in parts of their geographical relationship, but also adjacent to each other in other parts. For a diagrammatic illustration of this phenomenon see Figure 6. As will be seen later in this chapter, an example of this situation featured in *Gulf of Maine* (1984) where the relationship between the US and Canada in the geographical area in question, was partly one of oppositeness, and partly one of adjacency. As a result, there were different considerations applicable in respect of these different parts.

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<sup>159</sup> [1985] ICJ Rep 13, para. 70.

<sup>160</sup> (1985) 35 ILM 251, para. 103.b

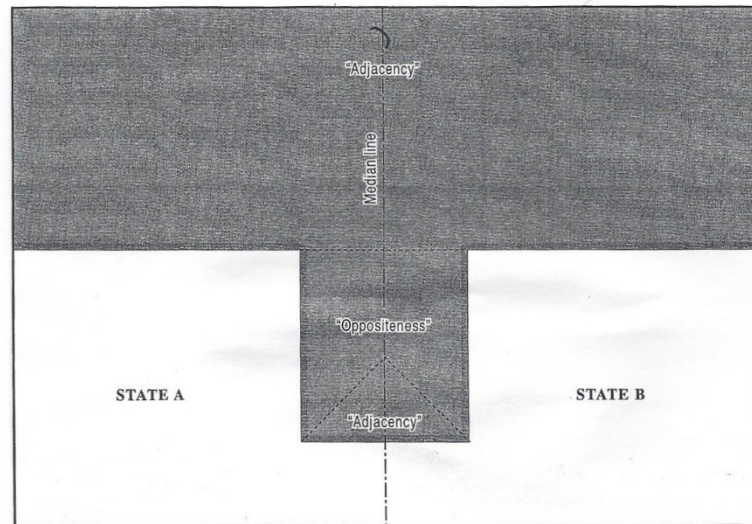


Figure 6: A relationship of both oppositeness and adjacency between two states from V. Prescott and C. Schofield, *The Maritime Political Boundaries of the World* (2<sup>nd</sup> ed., Martinus Nijhoff Publishers, Leiden, 2005), p.590, fig.10.14.

## ii. Parallels of latitude and meridians of longitude

This is a method which, between adjacent states, can take the form of a parallel or meridian drawn from the point where the land boundary joins the sea. This method assists in avoiding the cut-off effect mentioned above in cases of concave or convex coastlines or in the presence of islands.<sup>161</sup>

## iii. The method of enclaving islands

This can be used in conjunction with other methods of delimitation, and is essentially a way in which to deal with an island by affording a belt of maritime zone to that island. This is achieved by way of “a boundary consisting of arcs of circles drawn from headlands”.<sup>162</sup> This method usually results in less maritime area obtained by a

<sup>161</sup> Legault and Hankey (1993), p. 211.

<sup>162</sup> *Ibid.*, p. 212.

state whose island is enclaved, in comparison to what that state would have gained if the island had instead been used as a basepoint for drawing an equidistance line.<sup>163</sup> There can be either a “full enclave” where the maritime belt attributed to the island is entirely separated from that mainland coast of the state to which the island belongs, or there can be a “semi-enclave” where the maritime belt granted to the island feeds into the rest of the maritime area granted to the state to which the island belongs.<sup>164</sup> The semi-enclave occurs when the island is situated on or near an equidistance line.<sup>165</sup>

#### **iv. Perpendicular lines**

This is a line “perpendicular to the general direction of the coast” although lines perpendicular “to the closing lines of coastal indentations” have also featured.<sup>166</sup> This method entails a simplified form of equidistance, although it is limited in its use in that it relies on the coasts of both states being a straight line, which is geographically uncommon.<sup>167</sup> As stated in the *Gulf of Maine* (1984) case, decided by the Chamber of the ICJ, for a line perpendicular to the coast to be appropriate, “it is an almost essential condition” that the starting point of such a line lies between two adjacent states whose coastlines “lie successively along a more or less rectilinear coast, for a certain distance at least”, so that when the line is drawn, it would ideally leave an angle of 90 degrees on either side of it.<sup>168</sup> In that case, the third segment of the boundary was a line perpendicular to the closing line of the Gulf. This was used instead of an equidistance line because the Chamber did not wish the line in this area to begin from the midpoint of the Gulf closing line, which would have been “the approximate result” if equidistance had been used.<sup>169</sup> Thus the Chamber gave itself the flexibility to adjust the starting point of this segment of the boundary.<sup>170</sup> In *Guinea/Guinea Bissau* (1985), the Tribunal delimited most of the boundary by way

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<sup>163</sup> *Ibid.*, p. 212.

<sup>164</sup> *Ibid.*, p.212.

<sup>165</sup> *Ibid.*, p. 212.

<sup>166</sup> *Ibid.*, p. 213.

<sup>167</sup> *Ibid.*, p. 213.

<sup>168</sup> [1984] ICJ Rep 246, para. 176.

<sup>169</sup> Legault and Hankey (1993), p. 213.

<sup>170</sup> *Ibid.*, p. 213.

of a line perpendicular to the general direction of the continental seaboard using a macro-geographical approach.

The Tribunal established this general direction by drawing a line between relevant points on the coasts of Senegal and Sierra Leone.<sup>171</sup> In employing this method, the Tribunal took into account the potential effect of claims of third states which were not parties to the case, located on the coast of West Africa to the north and south of the Parties.<sup>172</sup>

### **Partial effect given to geographical features, usually islands**

This is a significant and relatively common method of modifying an equidistance line due to the presence of a particular geographical feature, usually an island. Without any modification, if an equidistance line was drawn strictly taking full account of an island, this may have a disproportionate effect on the line. In contrast, where an equidistance line is not drawn strictly, but rather is modified, this can be achieved by tempering the effect which an island may have on an otherwise strict equidistance line. It is important to remember that this approach can also be used in delimitations where a method other than an equidistance line is being used.

There are two main methods for achieving partial effect. The first is the bisector method, which was employed in the *Anglo-French Arbitration* (1977) to give half effect to the Scilly Isles.<sup>173</sup> It is appropriate for use between adjacent coasts, and coasts combining both adjacency and oppositeness. Using this method, the features to be considered are “reduced...to a single representative basepoint”, and a first equidistance line is constructed using that basepoint and “a single representative basepoint on the coast of the other party”.<sup>174</sup> A second equidistance line is also constructed, this time “from a single representative basepoint on the coast of each party, without reference to the feature in question.”<sup>175</sup> The angle between the two

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<sup>171</sup> *Ibid.*, p. 214.

<sup>172</sup> *Ibid.*, p. 214.

<sup>173</sup> *Ibid.*, pp.208-9. See *Anglo-French Arbitration* (1977)18 ILM 397.

<sup>174</sup> *Ibid.*, pp.208-9.

<sup>175</sup> *Ibid.*, p. 209.



lines is then bisected, equally dividing the area between the two equidistance lines.<sup>176</sup> See Figure 7 for an illustration.

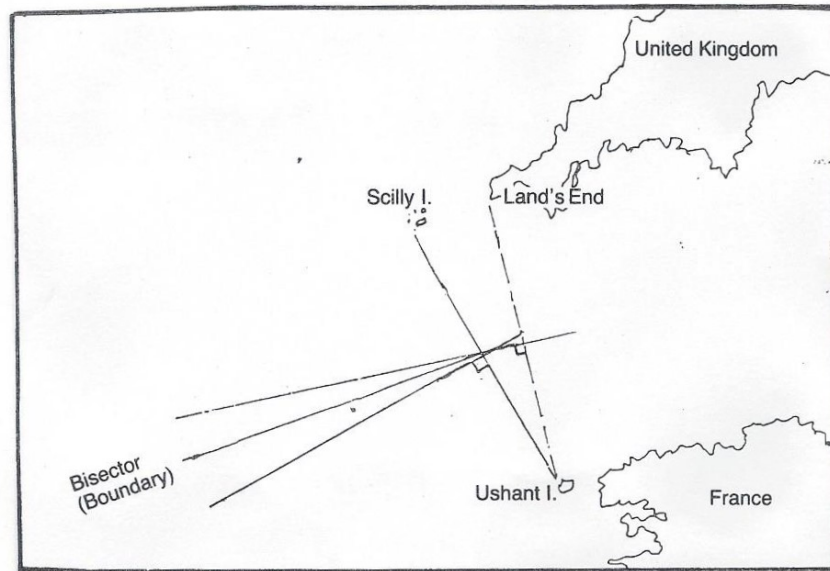


Figure 7: Half-effect as applied in the *Anglo-French Arbitration* (1977) 18 ILM 397, from H.W. Jayewardene, *The Regime of Islands in International Law* (Martinus Nijhoff Publishers, Dordrecht, 1990), p. 358.

The second method, which is appropriate between opposite coasts, is where two equidistance lines are constructed, the first utilising the feature, and the second ignoring it, and then drawing a third line which is equidistant from the first and second lines, or which divides the space between them equally or indeed in some other proportion, for example by giving three-quarters effect. This method was used to give half-effect to the Iranian Island of Kharg in the Saudi Arabia-Iran 1968 agreement.<sup>177</sup> See Figure 8 for an illustration.

<sup>176</sup> Legault and Hankey (1993), p. 209.

<sup>177</sup> As stated by Legault and Hankey (1993), p. 209, and H.W. Jayewardene, *The Regime of Islands in International Law* (Martinus Nijhoff Publishers, Dordrecht, 1990), pp.356-7. See Chapter 6 of thesis for further explanation. For a discussion of the utilisation of this method in that agreement in the context of international law, see Chapter 7.

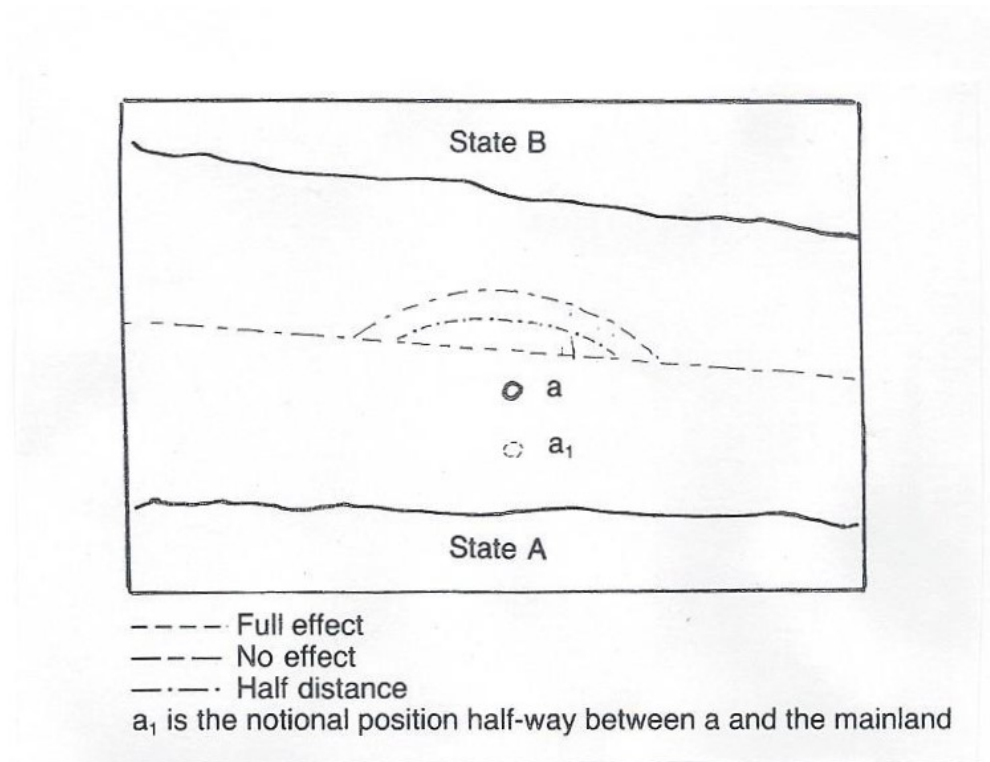


Figure 8: Half effect used in respect of Kharg Island in the Saudi Arabia-Iran 1968 agreement, from H.W. Jayewardene, *The Regime of Islands in International Law* (Martinus Nijhoff Publishers, Dordrecht, 1990), p. 356.

### **Bisection of angles representing the coastal fronts of two parties**

This is another method of modifying an equidistance line so that the effect of geographical features is modified.<sup>178</sup> This method involves the drawing of two lines, each representing the coastal front of each party, and then bisecting the angle between the two lines.<sup>179</sup> In the first segment of the single maritime boundary decided upon in *Gulf of Maine* (1984), the Chamber utilised the bisector of an angle formed by two lines which formed part of the rectangle shape of the Gulf itself, and which represented the general direction of the coasts of the US and Canada. The Chamber

<sup>178</sup> Legault and Hankey (1993), p. 210

<sup>179</sup> *Ibid.*, p. 210. It will be seen in Chapter 6 that this method was employed in the Sharjah-Umm al Qaywayn agreement of 1964.

then bisected the angle formed by perpendiculars to these lines, and then “transposed the resulting azimuth to the point of commencement” as agreed between the Parties in their Special Agreement.<sup>180</sup> The Chamber declined to use equidistance in this first segment due to the complicating presence of rocks and islands along the coast and also the dispute between the Parties over Machias Seal Island.

In the following section, there is conducted a brief survey and analysis of the case law on delimitation of the EEZ and continental shelf. The case law can essentially be considered in three chronological stages.

### **Case law 1969 – 1992**

The starting point for the purposes of this discussion is the *North Sea Continental Shelf* cases (1969). By way of background to these cases, a dispute had arisen between Germany, Denmark and the Netherlands over the continental shelf in the North Sea which was related to the belief that the North Sea contained a huge amount of oil and gas. The geographical context is that the three states are adjacent to each other on a concave coastline. Of the three states, Germany was the only one which was not a party to the CSC 1958. It was for the ICJ to decide, therefore, what constituted the customary law of the delimitation of the continental shelf. Denmark and the Netherlands argued that Article 6 CSC 1958, which provided for equidistance, was binding on Germany by virtue of the fact that it was part of customary international law. The ICJ rejected this, obtaining support from its observation that the International Law Commission, during its discussions on delimitation of the continental shelf between adjacent states in 1950 -1956, had not considered equidistance to be an inherent principle.<sup>181</sup> In the particular geographical circumstances before the ICJ, if equidistance had been applied, it would have resulted in Germany having an extremely small continental shelf due to the concavity of its coastline on the North Sea, with Denmark and the Netherlands getting a much larger

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<sup>180</sup> *Ibid.*, p, 210, and see [1984] ICJ Rep 246, paras 209-13. An azimuth is defined as “[t]he horizontal angle between a meridian and a line intersecting it” in Charney and Alexander, Vol. I (1993), p. xix.

<sup>181</sup> [1969] ICJ Rep 3, paras. 48-53.

area of the continental shelf, leading to inequity. This would be because the concavity would pull the lines of the boundaries with Germany inwards. This can be seen in Figure 6.

The ICJ famously stated the customary international rule on delimitation of the continental shelf to be as follows:

delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.<sup>182</sup>

As well as its pronouncements on what constituted the customary law on delimitation of the continental shelf, the ICJ's consideration of the meaning of Article 6 CSC 1958 is also instructive. Importantly, it stated that the application of the "special circumstances" exception to the rule of equidistance in Article 6 was "in pursuance" of the aim that boundaries should be based on equitable principles.<sup>183</sup> As such there did not seem to be much of a practical difference, if at all, between "special circumstances" and the "relevant circumstances" referred to in the ICJ's Judgment, in that the consideration of either would lead to a boundary drawn on the basis of equitable principles.

The ICJ went on to elaborate upon the kinds of considerations which would inform delimitation on the basis of the application of equitable principles. The ICJ made clear that there was no legal limit to the considerations which may be taken into account in the application of "equitable procedures", and most of the time it will involve the balancing of all such considerations rather than reliance on one to the exclusion of all others.<sup>184</sup> The ICJ further made clear that the weight to be given to different considerations will depend on the case in question.<sup>185</sup> Geological and geographical factors were identified as relevant, as well as the unity of hydrocarbon

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<sup>182</sup> Para. 101(C)(1).

<sup>183</sup> Para. 55.

<sup>184</sup> Para. 93.

<sup>185</sup> Para. 93.

deposits.<sup>186</sup> Further, a final factor to be taken into account was said to be the reasonable degree of proportionality between the extent of the continental shelf appertaining to the states concerned, and the lengths of their coastlines, which a delimitation based upon equitable principles ought to bring about.<sup>187</sup> The ICJ Judgment made clear that the fundamental aim of the exercise of delimitation was that of an equitable result being arrived at having regard to a large number of relevant factors with no single factor preponderating. It is apparent that this approach would encourage negotiation and compromise on the basis of its relatively open-ended nature, at the expense of certainty.

The *Anglo-French Arbitration* (1977) involved the drawing of the continental shelf boundary between the UK and France in the English Channel. Both States were Parties to the CSC 1958, although France's accession to CSC 1958 had been subject to reservations to Article 6.<sup>188</sup> The Arbitral Tribunal found that delimitation in the English Channel and the Atlantic region were subject to Article 6, and delimitation in the area of the Channel Islands were subject to customary law. The Tribunal stated, as had the ICJ in the *North Sea Continental Shelf Cases* (1969), that in customary law the basic principle of delimitation is that, failing agreement, the boundary must be determined in accordance with equitable principles.<sup>189</sup> However, the Tribunal also found that firstly, the application of Article 6, which entailed "special circumstances" working in tandem with the equidistance rule, and secondly, the customary law principle, both had as their aim a delimitation on the basis of equitable principles.<sup>190</sup> Therefore this meant that there would be very little distinction in the practical results of applying each method, as confirmed in the *North Sea Continental Shelf* cases

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<sup>186</sup> Para. 94.

<sup>187</sup> Para. 98.

<sup>188</sup> Para. 33 of the Tribunal's Decision states that on 14 June 1965 France deposited its instrument of accession to CSC 1958 to which was attached a declaration which included the following in respect of Article 6:

"ARTICLE 6 (paragraphs 1 and 2)

In the absence of a specific agreement, the Government of the French Republic will not accept that any boundary of the continental shelf determined by application of the principle of equidistance shall be invoked against it:

-if such boundary is calculated from baselines established after 29 April 1958;

-if it extends beyond the 200-metre isobath;

-if it lies in areas where, in the Government's opinion, there are "special circumstances" within the meaning of article 6, paragraphs 1 and 2, that is to say: the Bay of Biscay, the Bay of Granville, and the sea areas of the Straits of Dover and of the North Sea off the French coast."

<sup>189</sup> Para. 82.

<sup>190</sup> Paras. 65, 70.

(1969). Again, on this basis, there is no apparent distinction between “special circumstances” and “relevant circumstances” in any practical sense. It is also clear from the case law that the relevant circumstances which may adjust a provisional line are applicable whichever method of delimitation is utilised.

The notion of delimitation being one that should lead to an equitable result, is found in Articles 83(1) and 74(1) LOSC 1982 (dealing with delimitation of the continental shelf and EEZ respectively). The articles make no reference to equidistance, but specifically to achieving an “equitable solution”. The approach of utilizing the application of equitable principles, taking into account relevant circumstances to arrive at an equitable result was also reiterated in cases between 1982-1992, namely *Tunisia v Libya* (1982),<sup>191</sup> *Gulf of Maine* (1984), *Libya v Malta* (1985), *Guinea/Guinea-Bissau* (1985), and *St Pierre and Miquelon* (1992). During the period of time in which these cases were heard, it may be said that Articles 83(1) and 74(1) LOSC 1982 with their focus on the “equitable solution”, began to exert their influence. The focus on equitable principles in order to arrive at an equitable result is an approach which has no fixed method, and is characterised by flexibility instead of a focus on predictability.<sup>192</sup> Such an approach is reminiscent of the Truman Proclamation 1945 which stated that the delimitation of the continental shelf shall be determined “in accordance with equitable principles”. As part of such an approach in the case law, equidistance is rejected as a mandatory approach.

### **Case law 1993 – 2007**

By way of contrast, following on from these earlier cases, there was a discernible shift in the case law from 1993 onwards, in the form of the rise of what Evans refers to as the “primacy” of equidistance as a method of delimitation.<sup>193</sup>

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<sup>191</sup> [1982] ICJ Rep 18.

<sup>192</sup> Y. Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation* (Hart, Oxford, 2006) describes this approach as the “result-oriented equity approach”, see pp. 119-126; see also Tanaka, *The International Law of the Sea* (Cambridge University Press, Cambridge, 2012) pp. 202-204.

<sup>193</sup> M.D. Evans, “Maritime Boundary Delimitation” in D.R. Rothwell, A.G. Oude Elferink, T. Scott, and T. Stephens, eds., *The Oxford Handbook of the Law of the Sea* (Oxford University Press, Oxford, 2015), p. 254 at p. 276. A discussion of this shift in the case law is undertaken by Tanaka (2006), for

This development began with *Greenland and Jan Mayen* (1993).<sup>194</sup> This case involved delimitation of the continental shelf and also the fishery zones between the Parties in relation to Greenland and Jan Mayen Island.<sup>195</sup> The ICJ stated that “[p]rima facie, a median line delimitation between opposite coasts results in general in an equitable solution”<sup>196</sup> and that an equidistance line is adjusted in the light of the “relevant circumstances” of customary law, which are similar to the “special circumstances” of Article 6 CSC 1958.<sup>197</sup> Therefore the approach of using as a starting point an equidistance line and then considering if it needed to be adjusted by relevant circumstances, was applied as customary law for the first time. As such, the equidistance line was recognized as customary law for the first time in respect of opposite coasts. This equation between Article 6 CSC and customary law was what the ICJ had originally so clearly rejected in the *North Sea Continental Shelf* cases (1969). In *Greenland v Jan Mayen* (1993), when delimiting the fishing zone boundary, the ICJ applied customary law, which it said had the same effect as the provisions of Articles 74(1) and 83(1) LOSC 1982.<sup>198</sup>

The second stage of the *Eritrea/Yemen Arbitration* (1999) affirmed the position in the *Greenland v Jan Mayen* (1993) case that equidistance results generally in an equitable solution, subject to adjustments in the light of “relevant circumstances”.<sup>199</sup> In that case, the Tribunal took “as its starting point, as its fundamental point of departure, that, as between opposite coasts, a median line obtains”.<sup>200</sup> The Tribunal considered that, despite Eritrea not being a party to LOSC 1982, it had in the Arbitration Agreement accepted the application of provisions of LOSC 1982 which were relevant to the delimitation.<sup>201</sup> Clearly such provisions would include Articles

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example, pp.119-126, 353-5, and (2012), pp. 202-209, where he states, for example at p. 205, that a feature of this phase in the case law was the “corrective-equity” approach whereby “the equidistance method is incorporated into the domain of customary law”. See also Tanaka, “Reflections on Maritime Delimitation in the Cameroon/Nigeria case” (2004) 53 ICLQ 369, at pp. 381-388. F. Olorundami, in “The ICJ and its Lip Service to the Non-Priority Status of the Equidistance Method of Delimitation”, (2015) 4(1), *Cambridge Journal of International and Comparative Law* 53, at p. 72 goes somewhat further in his view that despite the ICJ’s assertions to the contrary, “the equidistance method both has priority and a presumption in its favour.”

<sup>194</sup> [1993] ICJ Rep 38.

<sup>195</sup> These two boundaries were delimited separately by the ICJ although they coincided.

<sup>196</sup> Para. 64.

<sup>197</sup> Para. 71.

<sup>198</sup> Para. 48.

<sup>199</sup> (2001) 22 RIAA 333.

<sup>200</sup> Para. 83.

<sup>201</sup> Para. 130.

74 and 83. The Tribunal went on to state that there was no reference in the Arbitration Agreement to the customary law of the sea, “but many of the relevant elements of customary law are incorporated in the provisions of the Convention”.<sup>202</sup> It was further confirmed by the Tribunal that the equidistance line was part of customary law as follows:

It is a generally accepted view as evidenced in writings of commentators and in the jurisprudence, that between coasts that are opposite to each other the median or equidistance line normally provides an equitable boundary in accordance with the requirements of the Convention, and in particular those of its articles 74 and 83...<sup>203</sup>

The Tribunal in the event decided on a single maritime boundary which was an equidistance line mostly between the mainland coasts of the Parties.

The approach where the equidistance line was considered as a provisional starting-point, although it was not always finally adopted, was demonstrated in *Qatar v Bahrain* (2001),<sup>204</sup> *Cameroon v Nigeria (Equatorial Guinea Intervening)* (2002),<sup>205</sup> *Barbados/Trinidad and Tobago Arbitration* (2006),<sup>206</sup> *Guyana/Suriname Arbitration* (2007),<sup>207</sup> and *Nicaragua v Honduras* (2007).<sup>208</sup> This approach has been stated specifically to be in furtherance of Articles 74 and 83 LOSC 1982.<sup>209</sup> As such, there may be said to be a parallel between the application of these provisions, which effectively constitute the application of customary international law, and the equidistance/special circumstances rule in Article 6 CSC 1958.<sup>210</sup>

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<sup>202</sup> Para. 130. The Convention referred is LOSC 1982.

<sup>203</sup> Para. 131.

<sup>204</sup> [2001] ICJ Rep 40. The ICJ made clear that an equidistance line was a provisional-starting point which extended to adjacent as well as opposite states.

<sup>205</sup> [2002] ICJ Rep 303.

<sup>206</sup> (2007) 27 RIAA 147.

<sup>207</sup> (2013) 30 RIAA 1.

<sup>208</sup> [2007] ICJ Rep 659.

<sup>209</sup> *Eritrea/Yemen Arbitration* (1999), para. 131; *Barbados v Trinidad and Tobago Arbitration* (2006), para. 307; *Guyana/Suriname Arbitration* (2007), para. 342.

<sup>210</sup> At the time of writing, there are four pending cases which may shed yet further light on the latest direction which case law discussed in this chapter is taking. Firstly, proceedings were instituted on 25 February 2014 by Costa Rica against Nicaragua before the ICJ, with Costa Rica requesting the ICJ to determine the single maritime boundary between the Parties; secondly, proceedings were instituted by Somalia against Kenya on 28 August 2014 before the ICJ, also requesting the determination of a single maritime boundary. Details are available on the ICJ’s website at <http://www.icj->



## **Case Law 2009 – present**

The case of *Romania v Ukraine* (2009) has been seen as a milestone in the form of the ICJ's attempt to impose a systematic approach by way of a three stage method which gives prime importance to the equidistance line in the delimitation of the continental shelf or exclusive economic zones, or to draw a single delimitation line.<sup>211</sup> This was the first time that a three stage test had been formulated, it being apparent since the *Greenland v Jan Mayen* (1993) case that there had effectively been a two stage test with the third stage effectively being incorporated into the second stage.<sup>212</sup> The first stage is to draw an equidistance line as a provisional line. The ICJ clearly stated that in the case of opposite coasts this "will" be the provisional line drawn, and in the case of adjacent states this "will" also be the provisional line drawn "unless there are compelling reasons that make this unfeasible in the particular case".<sup>213</sup> Invoking Articles 74 and 83 of LOSC 1982 and observing that the course of the final line should result in an equitable solution, the ICJ stated that the second stage is to "consider whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result."<sup>214</sup> The third stage is to:

verify that the line (a provisional equidistance line which may or may not have been adjusted by taking into account the relevant circumstances) does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line...A final check for an equitable

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[cij.org/docket/index.php?p1=3&p2=2](http://www.icj.org/docket/index.php?p1=3&p2=2) (accessed 26 June 2016). Thirdly, pending before the Permanent Court of Arbitration ("PCA") are proceedings brought by the Philippines against China on 22 January 2013 regarding a dispute over the maritime jurisdiction of the former in the West Philippine Sea; information can be found at the PCA's website at <https://pca-cpa.org/en/cases/> (accessed 26 June 2016). Fourthly, pending before ITLOS are proceedings brought by Ghana against Côte d'Ivoire on 22 September 2014 in respect of a maritime boundary dispute in the Atlantic Ocean; details are available at <https://www.itlos.org/cases/docket/> (accessed 26 June 2016).

<sup>211</sup> Evans refers to "the high water mark of equidistance" in the *Romania v Ukraine* case: see (2015), p. 260. At para. 115 of the Judgement, the ICJ states that "[w]hen called upon to delimit the continental shelf or exclusive economic zones, or to draw a single delimitation line, the Court proceeds in defined stages".

<sup>212</sup> As observed by R. Churchill, "The Bangladesh/Myanmar Case: Continuity and Novelty in the Law of Maritime Boundary Delimitation", (2012) 1 Cambridge J. Int'l & Comp. L. 137, p.141. at n.20.

<sup>213</sup> *Romania v Ukraine* [2009] ICJ Rep 61, para. 116.

<sup>214</sup> *Ibid.*, para. 120.

outcome entails a confirmation that no great disproportionality of maritime areas is evident by comparison to the ratio of coastal lengths.<sup>215</sup>

The ICJ confirmed that this should not be taken to mean that these respective areas should be proportionate to coastal lengths and referred to its previous observation in *Jan Mayen* (1993) where it stated that “the sharing out of the area is therefore the consequence of the delimitation, not vice versa”.<sup>216</sup> This confirms that the test is one of “marked disproportion” or “great disproportion” rather than proportionality between the respective coastal lengths and the relevant maritime area of each state.

The *Romania v Ukraine* (2009) case at the time of the judgment, gave a clear indication that a degree of certainty was being sought and imposed. When called upon to delimit the continental shelf or exclusive economic zones, or to draw a single delimitation line, the Court proceeds in defined stages. The obvious question at the time was whether the importance afforded to the provisional equidistance line would continue. Unfortunately it is not clear that this is the case in the subsequent decisions of the ICJ and tribunals. The application of the equidistance line in these later decisions bears further examination in order to evaluate its continued significance. This is relevant to the aims of this thesis, because in later chapters, an evaluation will be carried out of the use of equidistance in Gulf state practice, and what parallels can be drawn between Gulf state practice and the more general international law usage of the principle.

The next case that followed *Romania v Ukraine* (2009) was the first maritime boundary delimitation case heard by ITLOS, *Bangladesh v Myanmar* (2012).<sup>218</sup> Churchill has observed that this case followed the approach of previous cases delimiting the single maritime boundary, stating that “fears that involving yet another tribunal in maritime boundary delimitation risks fragmenting the international jurisprudence should have been allayed by this case”.<sup>219</sup> In this regard,

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<sup>215</sup> *Ibid.*, para. 122

<sup>216</sup> *Ibid.* referring to *Jan Mayen* [1993] ICJ Rep 67, para. 64.

<sup>218</sup> (2012) ITLOS Case No. 16.

<sup>219</sup> R. Churchill, “The Bangladesh/Myanmar Case: Continuity and Novelty in the Law of Maritime Boundary Delimitation”, (2012) 1 Cambridge J. Int'l & Comp. L. 137, pp. 151-2. Further, the view that ITLOS in the *Bangladesh v Myanmar* (2012) case adopted the ICJ's three stage approach was expressed by D.R. Rothwell and T. Stephens, *The International Law of the Sea* (2<sup>nd</sup> ed., Hart

it is important to note that ITLOS endorsed and adopted the three-stage test utilised by the ICJ in *Romania v Ukraine* (2009) However, a closer examination of *Bangladesh v Myanmar* (2012) also suggests other forces at work. Evans has observed that while ITLOS endorsed the three stage test, it emphasised the importance of an equitable solution.<sup>220</sup> Therefore, while ITLOS declared that it would use the three stage test, it stated as follows:

The Tribunal observes that the issue of which method should be followed in drawing the maritime delimitation line should be considered in light of the circumstances of each case. The goal of achieving an equitable result must be the paramount consideration guiding the action of the Tribunal in this connection.<sup>221</sup>

In the event, ITLOS commenced its delimitation with equidistance as a starting point, using basepoints selected by it. When it came to considering whether to adjust the line in light of relevant circumstances it did so to take into account the concavity of the shape of Bangladesh's coastline, which resulted in adjustment at a particular point (point 11 on Map 2) where the equidistance line begins to cut the southward projection of Bangladesh's coast.<sup>222</sup> It did not escape the attention of ITLOS itself or that of commentators that the direction of the adjusted provisional equidistance line which ITLOS finally decided upon "not differ substantially from a geodetic line starting at an azimuth of 215°" which was the line argued for by Bangladesh.<sup>223</sup> The final delimitation line was in reality the same as an angle-bisector line.<sup>224</sup>

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Publishing, Oxford and Portland, Oregon, 2016), p. 429. See also B.M. Magnússon, "Judgment in the Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (14 March 2012)", (2012) 27 *International Journal of Maritime and Coastal Law* 623 at p. 632 who states that Bangladesh v Myanmar (2012) "strengthens the three-stage delimitation method expounded in the *Black Sea* case."

<sup>220</sup> Evans (2015) at p. 260.

<sup>221</sup> Para. 235.

<sup>222</sup> Para. 331.

<sup>223</sup> Para. 334. For the observations of commentators of this, see, for example, Churchill (2012) at p.145 and B.M. Magnússon, "Judgment in the Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (14 March 2012)", (2012) 27 *International Journal of Maritime and Coastal Law* 623, p. 628 who refers to para. 53 of the Separate Opinion of Judge Gao who rather witheringly states that the adjusted equidistance line in the present case is not an equidistance line but a bisector line...What the adjustment does in the present case is to put feathers on a fish and call it a bird."

<sup>224</sup> Churchill (2012) at p. 145.

The ICJ in *Nicaragua v Colombia* (2012)<sup>225</sup> and *Peru v Chile* (2014)<sup>227</sup> also endorsed and followed the three stage test, although again, the actual resulting line drawn makes it unclear what the importance of equidistance actually is as a matter of practical reality in what Evans refers to as the “ ‘backtracking’ from the high water mark of equidistance” in *Romania v Ukraine* (2009), resulting in an indication that once again, despite the outward invocation of the three stage test, the need for an equitable solution may be coming to the fore as the most important consideration.<sup>228</sup>

The *Bangladesh v India* (2014) case decided by arbitration pursuant to the procedure in Annex VII of LOSC 1982 arguably continues the trend since *Romania v Ukraine* [2009] in casting doubt upon the importance which equidistance has in delimitation of the continental shelf and EEZ.<sup>229</sup> Once more, “an equitable result” is stated to be the “paramount objective” of the delimitation process.<sup>230</sup> Once again, as in the *Bangladesh v Myanmar* (2012) case, the provisional equidistance line was adjusted as a result of the concavity of Bangladesh’s coastline, and the result was a geodetic line.<sup>231</sup> While the argument may be made that the *status quo* set down by the three stage test was being followed, the adjustment made to the provisional line following the relevant circumstances of Bangladesh’s concave coast means that in reality the resulting lines are so far removed from equidistance as to undermine the application of the principle.<sup>232</sup> In *Bangladesh/India* (2014), the provisional equidistance line was departed from to such a great extent that, as Evans states, “[I]t is, in consequence, difficult to see why the provisional line was drawn at all, as it does not seem to have had any practical impact on the outcome”.<sup>233</sup> As such,

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<sup>225</sup> [2012] ICJ Rep 624.

<sup>227</sup> Judgment, ICJ General List No. 137

<sup>228</sup> Evans (2015), p. 260-1. See *ibid.*, p. 260 for an interesting linguistic analysis of the subtle ways in which the three stage test has been re-formulated by the ICJ in *Nicaragua v Colombia* (2012) and *Peru v Chile* (2014) leading to a relaxation of its terms. For another analysis of the ICJ’s approach in *Nicaragua v Colombia* (2012) which, suggests that the Judgment raises the “concern that an excessive departure from a provisionally drawn equidistance line may run the risk of undermining the predictability of the law of maritime delimitation”, see Y. Tanaka, “Reflections on the Territorial and Maritime Dispute between Nicaragua and Colombia before the International Court of Justice” (2013) *Leiden Journal of International Law* 909, p. 930.

<sup>229</sup> PCA Case 2010-16.

<sup>230</sup> *Ibid.*, para. 339. See also para. 397 where the tribunal states that “[t]he overarching objective of the delimitation process is to achieve an equitable solution”.

<sup>231</sup> *Ibid.*, Para. 478

<sup>232</sup> Evans states that in *Bangladesh v Myanmar* (2012) that ITLOS “set equidistance aside” and the tribunal in *Bangladesh v India* (2014) “largely abandoned” the provisional equidistance line. See Evans (2015), pp. 260 and 277.

<sup>233</sup> *Ibid.*, p. 277.

according to Evans, equity “may be re-emerging as the dominant approach, though couched in the language of equidistance.”<sup>234</sup>

On a different, yet interesting point, in *Bangladesh v India* (2014) the tribunal did not accept that basepoints located on low-tide elevations should be used for delimitation. Rather, the tribunal decided that these should be located on the low water line of the parties’ coastlines.<sup>235</sup> This has relevance for delimitation in the Gulf which is characterised by numerous low elevations.

The indication of this most recent leaning towards the equitable solution in the most recent case law, which is reminiscent of the earlier cases referred to above where an equitable result was the primary concern, is of interest in this thesis. An important question is whether such an indication can be identified in the Gulf State practice.

### **Equitable principles**

It is not intended to deal with the issue of equitable principles in any detail in this chapter, although it is important to touch upon it as an aid to clarifying the approach of the case law which in turn will help focus the analysis for the purpose of this thesis.

Equitable principles were developed in the *North Sea Continental Shelf* cases (1969) and in the subsequent case law. They are distinct from both practical methods of delimitation, which have been referred to above, and from relevant circumstances which are dealt with later in this chapter.<sup>240</sup> It is useful to set out here the main examples of what have been identified in the cases as equitable principles or criteria in the case law. The equitableness of equitable criteria has been said in the case law to depend on the individual case. The most often cited in the case law are: i) the land dominates the sea;<sup>241</sup> ii) whenever possible, there should be the prevention or

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<sup>234</sup> Evans (2015) pp. 260-1, and see also pp. 276-9; see also M.D. Evans, ed., “The Law of the Sea” in *International Law* (4<sup>th</sup> edition, Oxford University Press, Oxford, 2014), p. 678.

<sup>235</sup> PCA Case 2010-16, paras 223, 260-4.

<sup>240</sup> *Gulf of Maine* (1984) made the distinction between methods of delimitation and “equitable criteria”, see paras. 114 and 159.

<sup>241</sup> *North Sea Continental Shelf* cases (1969), para. 96; *Gulf of Maine* (1984) para.157.

limitation of any cut-off of the seaward projection of the coast of either party to the dispute;<sup>242</sup> iii) whenever possible, the seaward extension of a state's coast should not encroach on the natural prolongation of the other, or areas too close to the coast of the other state;<sup>243</sup> and iv) where there are no special/relevant circumstances, an equitable solution is the equal division of the areas of overlap of the zones appertaining to each state.<sup>244</sup>

*Brownlie's Principles of Public International Law* asserts that such equitable principles "have a normative character as a part of general international law".<sup>245</sup> However, it is difficult to justify such a statement. This is on the basis that they are only ever one part of the overall approach which was made up of a number of factors. Additionally, the substantive content of equitable principles has been the subject of much academic debate.<sup>246</sup> Furthermore, the rise of equidistance as the starting point of delimitation, may be said to have lessened in significance the notion of equitable principles so that any normative character that they might have had may well be subsumed within other considerations which are easier to identify, such as the application of relevant circumstances. In this regard, it is of interest to note Evans' recent and significant consideration of the elements of what may be said to be the

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<sup>242</sup> *Gulf of Maine* (1984), paras. 110, 157; *Guinea/Guinea-Bissau* (1985), para. 102; *Barbados v Trinidad and Tobago* (2006), para. 232.

<sup>243</sup> *North Sea Continental Shelf* cases (1969), para. 101(C)(1); *Gulf of Maine* (1984) para.157; *Libya/Malta* (1985), para. 46; *Barbados v Trinidad and Tobago* (2006), para. 232.

<sup>244</sup> *North Sea Continental Shelf* cases (1969), para. 101(C)(2); *Gulf of Maine* (1984) para. 157.

<sup>245</sup> J. Crawford, *Brownlie's Principles of Public International Law* (8<sup>th</sup> ed., Oxford University Press, Oxford, 2012), p. 288.

<sup>246</sup> For example, in his discussion of equitable principles, M.D. Evans in *Relevant Circumstances and Maritime Delimitation* (Clarendon Press, Oxford, 1989), refers to the lack of substantive content of equitable principles. At p. 78 he refers to *Libya/Malta* (1985) Judgment at para. 46 which itself referred to the "normative character of equitable principles applied as a part of general international law" and which were said to govern delimitation by adjudication, arbitration, and the duty of the parties to seek a delimitation by agreement in order to reach an equitable result. In response, Evans states that "[if] equitable principles are seen as comprising a set of specific rules to which each delimitation is to conform, then the import of this passage would be that such rules would indeed be *jus cogens*, and that is an unacceptable an unwarranted interpretation...International law calls for the *application* of equitable principles—not giving examples of them". In his later writing, Evans refers to the "...happy fact that nobody has ever really known what an 'equitable principle' of delimitation was or is", see "Maritime Boundary Delimitation: Where Do We Go From Here?" in Freestone, D., Barnes, R., and Ong, D., *The Law of the Sea. Progress and Prospects* (Oxford University Press, Oxford, 2006), p.137 at p.144. For another perspective in which equitable principles have a continuing and fundamental role to play, see T. Cottier, *Equitable Principles of Maritime Boundary Delimitation. The Quest for Distributive Justice in International Law* (Cambridge University Press, Cambridge, 2015), Chapter 6. See also K.B. Lee, *The Demise of Equitable Principles and the Rise of Relevant Circumstances in Maritime Boundary Delimitation* (Ph.D. Thesis, University of Edinburgh, 2012) for an interesting discussion of the reduction in importance of equitable principles.

“process” of maritime delimitation, as confirmed by most recent case law.<sup>247</sup> In so doing, he refers to the first element of the process, namely the identification of relevant coasts and areas, and then secondly, to the identification of the method of delimitation, and in this respect, equidistance will be the provisional starting point unless there are compelling reasons not to do so. The third element is deciding whether or not to adjust the provisional line on the basis of special or relevant circumstances. It is at this point in his discussion that he refers to “geographic” factors which may be relevant, “three of which have become particularly important” stating that:

The first is one of the most long established factors - described in the *North Sea Continental Shelf* cases as an ‘equitable principle’ - that delimitation must be conducted ‘without encroachment on the natural prolongation of the land territory of the other’, subsequently understood in terms of there being no ‘cut off’... The second factor, which has come to carry great weight, is whether there is any significant disparity in the ratio between the lengths of the relevant coasts of the parties.<sup>248</sup>

Thus, the equitable principles referred to above are subsumed within the category of relevant circumstances as “geographic” factors. This approach is another support for the erosion of the significance of “equitable principles” as a separate body of norms.

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<sup>247</sup> Evans (2015), pp. 266-270.

<sup>248</sup> *Ibid.*, p. 269.

**i. The land boundary between adjacent states**

In the *Tunisia/Libya* (1982) case, the continental shelf boundary line decided upon by the ICJ was one which was drawn perpendicular to the coast rather than an equidistance line. The undisputed land frontier established by a Convention of 1910 was held to be a relevant circumstance in the absence of any agreement on the delimitation of any maritime zones which could have been of assistance in deciding upon the continental shelf delimitation boundary.<sup>250</sup> The ICJ also considered the 1910 Convention itself to be a relevant circumstance for the delimitation of the continental shelf between the Parties.<sup>251</sup> Both Parties agreed in recognising the relevance of the land boundary starting point, reinforcing Ras Ajdir on the coast as a basic point of reference.<sup>252</sup> That relevance was underlined by the fact that both Parties had used it as a starting point in past attempts to unilaterally establish partial maritime delimitations.<sup>253</sup> In the case of *Guinea/Guinea Bissau* (1985), the Tribunal referred to the ICJ's approach in *Tunisia/Libya* with approval and concluded that the land boundary between the two adjacent African states, and the continuation of that

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<sup>249</sup> The phrase "relevant circumstances" as opposed to "special circumstances" is used in this thesis on the basis that "special circumstances" was a phrase used in Article 6 CSC 1958, while "relevant circumstances" is associated with customary international law which continues to be applicable pursuant to the provisions in LOSC 1982 dealing with delimitation of the continental shelf and EEZ. It is contended here that there is no substantive difference between "special" and "relevant" circumstances. However, this issue has been the subject of some consideration. For example, R.R. Churchill and A.V. Lowe, *The Law of the Sea* (3<sup>rd</sup> ed., Juris Publishing, Manchester University Press, 1999) at pp. 187-8 state that "[s]pecial circumstances" have traditionally been regarded as being fairly narrow in scope: for example, the principal drafters of article 6, the International Law Commission, considered 'special circumstances' as embracing (and apparently being limited to) exceptional configurations of the coast, and the presence of islands and navigable channels. 'Relevant circumstances', on the other hand, have been regarded as being much wider in scope; indeed in the *North Sea Continental Shelf* cases the International Court suggested that there was no limit to the kind of circumstances that might be taken into account... Subsequent cases, however, have tended to narrow such circumstances to those that are relevant to the continental shelf and are primarily geographical in character. In the *Greenland/Jan Mayen* case the International Court having... effectively equated article 6 of the 1958 Convention with customary law, went on to point out that although special circumstances and relevant circumstances were different in origin and in name, there was a tendency to assimilate the two, because 'they both are intended to enable the achievement of an equitable result'..."

<sup>250</sup> Para. 82.

<sup>251</sup> Para. 85.

<sup>252</sup> Para. 85.

<sup>253</sup> Para. 86.



boundary into the sea, known as the ‘southern limit’, was an important relevant circumstance to be taken into account.<sup>254</sup>

**ii. Previous conduct of the parties in relation to purported maritime limits**

In the *Tunisia/Libya* (1982) case, the ICJ noted a *de facto* delimitation line which had historically existed prior to both Parties obtaining independence and which had been relied upon by both Parties in their subsequent boundary-related activity. In 1913, Italy had proposed a delimitation line between Libyan and Tunisian sponge-banks, drawn perpendicularly to what was considered to be the direction of the coastline at Ras Ajdir. This was developed more formally by Italy in 1919 as a maritime border between Tunisia and Tripolitania, using “the line perpendicular to the coast at the border point, which is, in this case, the approximate bearing north-north-east from Ras Ajdir”.<sup>255</sup> The ICJ specifically identified as a relevant circumstance the fact that there existed a *de facto* maritime delimitation line from Ras Ajdir:

which was the result of the manner in which both Parties initially granted concessions for offshore exploration and exploitation of oil and gas. This line of adjoining concessions, which was tacitly respected for a number of years, and which approximately corresponds furthermore to the line perpendicular to the coast at the frontier point which had in the past been observed as a *de facto* maritime limit, does appear to the Court to constitute a circumstance of great relevance for the delimitation.<sup>256</sup>

Thus the lines established by the Parties for delimiting boundaries of petroleum concessions were relevant.

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<sup>254</sup> Para. 106

<sup>255</sup> Provided for by the Instructions for the Surveillance of Maritime Fishing in the waters of Tripolitania and Cyrenaica, 1919, referred to in *Tunisia/Libya*, para. 93.

<sup>256</sup> Para. 96.

### iii. Geographical factors

#### a. A change in the direction of the relevant coastline

In the *Tunisia/Libya* (1982) case, delimitation of the continental shelf between the states was held to be by way of a line perpendicular to the coast rather than an equidistance line, the ICJ stating that equidistance was not mandatory and had no privileged status.<sup>257</sup> The Tunisian coast westward from the land boundary with Libya initially runs approximately in the same direction as Libya's, but then changes direction so as to run approximately in a south-west/north-east direction. The change in direction in Tunisia's coast was held to be a relevant circumstance which had an effect on the course of the second sector of the boundary line, causing it also to change direction accordingly.<sup>258</sup>

In the *Gulf of Maine* case (1984) it was confirmed that a change in the relationship between the coasts of two states which changes from one of adjacency to being opposite to each other, might be one of the "special circumstances" contemplated by Article 6 CSC 1958. In that case it was noted that inside the Gulf of Maine, the US and Canada are adjacent to each other. However, on approaching the opening of the Gulf, the relationship between them changes to one of opposition, this change being a factor to be taken into account when drawing the delimitation line at that point.

#### b. A concave coastline

In the *North Sea Continental Shelf* cases (1969), a main physical feature was Germany's concave coastline. However, the ICJ, having decided that equidistance was not a part of customary international law, found that it was unnecessary to decide

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<sup>257</sup> Paras. 110-111.

<sup>258</sup> Para. 78.

whether the configuration of the German North Sea coast was a “special circumstance” either under Article 6 CSC 1958 or under any rule of customary law. Therefore, the ICJ declined to hold that a concave coastline was a special circumstance.<sup>259</sup> However, a concave or convex coastline, and other coastline irregularities, whilst not described specifically as “special circumstances” in the legal sense, were stated to be geographical circumstances which, if equidistance was applied, would lead to inequity.<sup>260</sup> More recently, in both *Bangladesh v Myanmar* (2012) and *Bangladesh v India* (2014), Bangladesh’s concave coastline was viewed as a relevant circumstance which required adjustment of the provisional equidistance line.<sup>261</sup>

c. Islands, uninhabited rocks, and low-tide elevations

In the *Anglo-French Arbitration* (1977), when delimiting the boundary between the UK and France, there were two main sectors of the line to decide upon. Firstly, that falling within the English Channel, and secondly, that extending outwards into the Atlantic.

In the first sector, where customary law, and not Article 6 CSC 1958 was applicable, the tribunal had to decide upon the impact which the Channel Islands was to have on the equidistance line. The question was whether they were a relevant circumstance which would justify a departure from the equidistance line. They are positioned closer to France than the UK, and although they are not constitutionally part of the UK, the Tribunal treated them as islands possessed by the UK.<sup>262</sup> They lie within 12 miles of the French coast.<sup>263</sup> The “size and importance” of the Channel Islands were factors to be taken into account “in balancing the equities” in the region.<sup>264</sup> The Tribunal decided that giving the Channel Islands their full effect in delimiting the equidistance line (which was agreed by the Parties to be an appropriate

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<sup>259</sup> Para. 82.

<sup>260</sup> Para. 89.

<sup>261</sup> *Bangladesh v Myanmar* (2012) ITLOS Case No. 16, paras. 290-7; *Bangladesh v India* (2014) PCA Case 2010-16, paras. 402-21.

<sup>262</sup> Para. 187.

<sup>263</sup> Legault and Hankey (1993), p. 213.

<sup>264</sup> Para. 187.

line if the Channel Islands did not exist) would lead to inequity in reducing the area of continental shelf appertaining to France, and decided that, if Article 6 CSC 1958 had been applicable, they would constitute a “special circumstance” within that provision.<sup>265</sup> A two part solution was found by the tribunal. Firstly, an equidistance line disregarding the Channel Islands was used, and secondly a semi enclave was created around the Channel Islands from the baselines of their territorial sea. These were 12nm enclaves, incorporating 3nm of territorial sea and 9nm of continental shelf and EFZ.<sup>266</sup> Thus their maritime belts were demarcated from that the southern limit of France’s continental shelf in that location.

In the second sector, in the Atlantic region, where Article 6 CSC 1958 did apply, each State had islands which required consideration: the UK’s Scilly Islands, and France’s Island of Ushant, both extending outwards from each State’s coast into the Atlantic Ocean. The Scilly Isles extend further westwards than the Island of Ushant, and the effect of the location of the Scilly Isles would be to deflect an equidistance line more south-westerly than if such a line was drawn from the baseline of the UK mainland. The result of that would be that more continental shelf would appertain to the UK. The Tribunal therefore decided that the position of the Scilly Isles was a “special circumstance” as it created a distorting effect on the equidistance line.<sup>267</sup> The solution was to modify the equidistance line by taking account of the Scilly Isles, but to give them less than full effect and they were in fact given only half effect.<sup>268</sup> This was achieved by firstly drawing a line equidistant between the two coasts without the use of the islands as a basepoint, and secondly drawing an equidistance line using the islands as basepoints. A boundary giving half effect to the islands was then the line drawn mid-way between those two equidistance lines.

Islands may in fact sometimes not be treated as a special or relevant circumstance. Taking the Eddystone Rock in the *Anglo-French Arbitration* (1977), the Tribunal declined to decide on whether it in fact was an island (a matter of dispute between the Parties), but decided that it would form a relevant basepoint for the

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<sup>265</sup> Para. 196.

<sup>266</sup> Legault and Hankey (1993), p. 213.

<sup>267</sup> Para. 248.

<sup>268</sup> Para. 251.

equidistance line, and so it was not treated as a relevant circumstance which had the effect of modifying its course.<sup>269</sup>

In *Tunisia/Libya* (1982), the ICJ held that the Kerkennah Islands and surrounding low-tide elevations were relevant circumstances. The Islands were given “half-effect”. Similarly, in *Gulf of Maine* (1984) the Chamber considered Canada’s Seal Island and gave it half effect when deciding upon the location of the equidistance line in the second segment.<sup>270</sup>

In *North Sea Continental Shelf Cases* (1969), the ICJ warned against seeking to draw a perfectly equidistant line taking into account all coastal features, stating that no account need to be taken of “islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means”.<sup>271</sup> In *Gulf of Maine* (1984), the Chamber referred to the potential disadvantages in a method which takes tiny islands, uninhabited rocks or low-tide elevations as basepoints for the drawing of a line intended to effect an equal division of a given area. Indeed one reason which the Chamber gave for discounting an equidistance line for the first segment of the boundary was the fact that the end result would likely be:

a line all of whose basepoints would be located on a handful of isolated rocks, some very distant from the coast, or on a few low-tide elevations: these are the very type of minor geographical features which, as the Court and the Chamber have emphasized, should be discounted if it is desired that a delimitation line should result so far as feasible in an equal division of the areas in which the respective maritime projections of the countries’ coasts overlap.<sup>272</sup>

The fact that not all islands will be viewed as a relevant circumstance, was demonstrated in *Bangladesh v Myanmar* (2012) in respect of Bangladesh’s St Martin’s Island. ITLOS stated that

the effect to be given to an island in the delimitation of the maritime boundary in the exclusive economic zone and the continental shelf depends on the geographic realities and the circumstances of the specific case. There is no general rule in this

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<sup>269</sup> Para. 144.

<sup>270</sup> Para. 222.

<sup>271</sup> Para. 57.

<sup>272</sup> Para. 210.

respect.<sup>273</sup>

Particular features of St Martin Island's location are that it is located approximately 4.5nm from Myanmar's mainland coast in the territorial seas of both states. In the event it was not permitted to have an effect on the single continental shelf and EEZ boundary because, due to its location, giving effect to it would result in a boundary line blocking the seaward projection from Myanmar's coast causing an "unwarranted distortion" of the line. It was therefore not treated as a relevant circumstance.<sup>274</sup>

d. A quasi-enclosed sea

As demonstrated in the *North Sea Continental Shelf* cases (1969), the North Sea is a location where several states' claims to the continental shelf converge.<sup>275</sup> This feature of the North Sea was elaborated upon in the Separate Opinion of Judge Rivero who referred to the North Sea as a "quasi-enclosed sea" which was a "special geographical configuration" resulting in the need for the adoption of a system of converging delimitation lines.<sup>276</sup> Further, Judge Nervo in his Separate Opinion described the North Sea as an "internal sea" for practical purposes in the sense that while there were some outlets to the ocean, the North Sea is bordered almost along its entire edge by coastal states. Moreover, the bed of the North Sea is a single continental shelf in which the continental shelves of the coastal states overlap and indeed converge so that the end-point or boundary of the continental shelf of each state touches the continental shelf of the opposite states on the other side of the Sea. Judge Nervo concluded that, in his opinion, the nature of the North Sea as an "internal" sea meant that special circumstances existed which justified deviation from the equidistance

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<sup>273</sup> Para. 317

<sup>274</sup> Paras. 318-9. As noted by Anderson, the same approach was taken with Ukraine's Serpents' Island in *Romania v Ukraine* [2009] ICJ Rep 62. Like St Martin's Island, it is a small island close to the land boundary terminus and like St Martin's Island, it was given no effect on the provisional equidistance line delimiting the continental shelf and EEZ. However, both islands had an arc drawn partly around their 12nm territorial seas by way of an enclave. See D.H. Anderson, "Delimitation of the Maritime Boundary in the Bay of Bengal (*Bangladesh/Myanmar*)" (2012) 106 AJIL 817, at p. 823.

<sup>275</sup> Para. 89.

<sup>276</sup> Para. 6.

line, and this was because an internal sea was not contemplated by Article 6 CSC 1958.<sup>277</sup> The Gulf can clearly also be described as a quasi-enclosed sea with a single continental shelf.<sup>278</sup> However, it is of note that in *Romania v Ukraine* (2009), the enclosed nature of the Black Sea did not call for an adjustment to the provisional equidistance line.<sup>279</sup>

e. A marked difference in the lengths of the relevant coastlines and the concept of proportionality

As a concept, proportionality has featured heavily in the cases since the Judgment of the ICJ in the *North Sea Continental Shelf Cases* (1969). There the ICJ referred to reasonable proportionality as a factor to take into account when establishing a boundary line according to equitable principles, referring to proportionality between the extent of the continental shelf appertaining to each state, and the lengths of the relevant coastlines of the parties.<sup>280</sup> The Tribunal in the *Anglo-French Arbitration* (1977) confirmed this approach, stating that proportionality is an element in the appreciation of the appropriateness of equidistance or any other method of delimitation.<sup>281</sup> In other words, it is a factor in the choice of the delimitation method. It further stated that proportionality is a factor to be taken into account in two ways: firstly, in assessing the ratio of the continental shelf appertaining to each state, to their coastlines, and secondly, to determine the equitable or inequitable effects of particular geographical features on the course of an equidistance line.<sup>282</sup>

In *Tunisia/Libya* (1982), the ICJ agreed that such proportionality is indeed required by and follows from the fundamental principle of ensuring an equitable delimitation between the States concerned. The ICJ noted that the length of the coast of Libya from Ras Tajoura to Ras Ajdir, without taking account of small inlets, creeks and lagoons, is approximately 185 kilometres; the length of the coast of Tunisia from

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<sup>277</sup> Page. 90.

<sup>278</sup> See Chapter 1.

<sup>279</sup> [2009] ICJ Rep 62, paras 177-8.

<sup>280</sup> Para. 98.

<sup>281</sup> Para. 98.

<sup>282</sup> Para. 99.

Ras Ajdir to Ras Kaboudia, measured in a similar way, and treating the island of Jerba as though it were a promontory, is approximately 420 kilometres. Thus the relevant coastline of Libya stands in the proportion of approximately 31:69 to the relevant coastline of Tunisia. It noted further that the coastal front of Libya, represented by a straight line drawn from Ras Tajoura to Ras Ajdir, stands in the proportion of approximately 34:66 to the sum of the two Tunisian coastal fronts represented by a straight line drawn from Ras Kaboudia to the most westerly point of the Gulf of Gabes, and a second straight line from that point to Ras Ajdir. With regard to sea-bed areas, it noted that the areas within the area relevant for delimitation appertaining to each State following the method indicated by the ICJ stand to each other in approximately the proportion Libya 40:Tunisia 60. This result, taking into account all the relevant circumstances, seemed to the ICJ to meet the requirements of the test of proportionality as an aspect of equity.<sup>283</sup> The ICJ listed proportionality amongst the other relevant circumstances to be taken into account in achieving an equitable delimitation.

In *Libya/Malta* (1985) the ICJ noted the “considerable disparity” between the lengths of the coasts of Malta and Libya, and stated that this “constitutes a relevant circumstance which should be reflected in the drawing of the delimitation line”.<sup>284</sup> The ICJ drew a distinction between the two aspects of proportionality highlighted in the *Anglo-French Arbitration* (1977). Firstly, on the one hand, the length of the parties’ coasts was a factor to be taken into account as part of the process of delimitation, and secondly, the test of a reasonable degree of proportionality is one which can be applied to check the equitableness of a delimitation line. On the facts of the case before it, the ICJ found that the difference in the coastal lengths was:

so great as to justify the adjustment of the median line so as to attribute a larger shelf to Libya; the degree of such adjustment does not depend upon a mathematical operation ....<sup>285</sup>

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<sup>283</sup> Para. 131.

<sup>284</sup> Para. 68.

<sup>285</sup> Para. 68. See also para. 78.



In *Gulf of Maine* (1984), the difference in the coastal lengths of the Parties in the Gulf of Maine was a “special circumstance” to be taken into account leading to a correction of equidistance, as part of the concept of proportionality between the continental shelf area attributed to each state party by the delimitation, and the lengths of their respective coastlines.<sup>286</sup> However, the comparison of the coastal lengths was not used as a final test to check the result. On drawing a closing line across the Gulf, it was clear that the only part belonging to Canada was the short right side, whereas both the other short side and the long side at the back of the rectangle belonged to the US. This “special circumstance” was a factor which justified the correction of an equidistance line in terms of adjusting its location.

The Chamber in the *Gulf of Maine* case (1984) stated that proportionality was neither an autonomous criterion nor a method of delimitation.<sup>287</sup> It described it as an “auxiliary criterion”.<sup>288</sup> It did not define this, but it was interpreted by the Joint Separate Opinion of Judges in *Libya/Malta* (1985) as meaning:

a criterion like any other, but it is not an autonomous one, in the sense that the delimitation operation should not be guided by it as a criterion independent of any other, whereas it should in fact be combined with other criteria.<sup>289</sup>

Thus proportionality is a relevant factor among others.<sup>290</sup> Disproportionality may result from particular geographical features.

In *Libya/Malta* (1985) the ICJ drew a distinction between taking account of a difference in the length of coastlines between states during the delimitation process in order to achieve an equitable boundary and making an *ex post* check using the test of proportionality to check the equitableness of the proposed result. Defining the difference between the coastal lengths in quantitative terms (such as by a ratio) is suited to this *ex post* assessment, operating as a final check on the equitableness of

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<sup>286</sup> Paras. 184-185.

<sup>287</sup> Para. 218.

<sup>288</sup> Para. 218.

<sup>289</sup> Joint Separate Opinion of Judges Ruda, Bedjaoui, Jiménez De Aréchaga, para. 29.

<sup>290</sup> *Guinea/Guinea Bissau* (1985) at para. 120 also referred to the rule of proportionality between states' coastlines and the area of continental shelf to be attributed to them as one factor amongst other circumstances to be taken into account in order to effect a delimitation. In that case, the general comparability of the Parties' coasts was viewed as a relevant circumstance.

the line.<sup>291</sup> The ICJ stated that it was appropriate to use it to test the equitability of a final solution decided upon. However, in a situation where there were difficulties in identifying the relevant coasts a fixed mathematical ratio would not be appropriate to assess the relevant coasts and the continental shelf areas generated by them. Therefore in that case the ICJ carried out a broad assessment of the equitableness of the result, without reducing it to arithmetical terms, and confined itself to observing that there was “no evident disproportion”.<sup>292</sup>

In *Libya/Malta* (1985), the ICJ made clear that an improper use of the concept of proportionality would be where the ratio of the coastal lengths was of itself determinative of the areas of continental shelves properly appertaining to each party, noting that if such a use of proportionality were right, “it is difficult indeed to see what room would be left for any other consideration”.<sup>293</sup> Thus the aim should not be to achieve a predetermined ratio between the relevant coasts and the respective continental shelf areas.

There was a marked disparity between the coasts of Canada and the French Islands in the *St Pierre and Miquelon* (1992) Arbitration, the ratio being, according to the Tribunal, 15.3:1. The Tribunal stated that the difference in the length of relevant coasts was an important factor to take into account for an equitable delimitation, in order to avoid disproportionate results, and also subsequently, to test the equitableness of the solution finally adopted. Again, the dual operation of proportionality was referred to.<sup>294</sup>

In *Greenland v Jan Mayen* (1993) the great difference in the lengths of the relevant coasts of Greenland and Jan Mayen (about 9:1) was found to be one relevant circumstance which operated to adjust the provisional median line.

As is clear from the case law, the relationship between the lengths of the parties’ coastlines has been taken into account in three main ways, with the first and second being interlinked. Firstly, as a factor which helps to decide which method of

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<sup>291</sup> Para. 66.

<sup>292</sup> Paras. 74-75.

<sup>293</sup> Para. 58. See also *Guinea/Guinea Bissau* (1985) where it was stated by the Tribunal that “the rule of proportionality is not a mechanical rule based only on figures reflecting the length of the coastline” (para. 120).

<sup>294</sup> *St Pierre and Miquelon* (1992), para. 45.

delimitation will be used; secondly, it is viewed as a relevant circumstance, and this is somewhat linked with the choice of method; and thirdly it is considered as a test of the equitable nature of a provisional line *ex post facto*. In respect of this third consideration, the case law makes clear that it may be unnecessary to reduce the relationship between the parties to a mathematical ratio and indeed that this is an assessment more appropriately made in the round as a matter of judgment considering all the coastal and geographical features in the relevant area. Linked with this approach in the cases is the number of potential difficulties in applying a concept of proportionality as a final check in this way. For example, how to identify the relevant coastline in order to assess its length, how to deal with islands in that calculation, and how to objectively assess the disparity between coastlines' lengths. For instance, the ICJ in *Libya/Malta* (1985) found practical difficulties in identifying relevant coasts and areas which rendered it impossible to reduce the differences to a mathematical ratio, thus illustrating the flaws in this approach.<sup>295</sup>

As discussed earlier in this chapter, in more recent case law the test of disproportionality is applied at the third stage of the three stage approach to delimitation. This test compares the lengths of the parties' coastlines with the delimited area attributed to the parties at the second stage, resulting in an *ex post facto* check that the result reached is not inequitable. As such, it is a stage which takes place after relevant circumstances have been considered. This is demonstrated for example in *Bangladesh v India* (2014), *Peru v Chile* (2014), *Bangladesh v Myanmar* (2012), *Nicaragua v Colombia* (2012) and *Romania v Ukraine* (2009).

#### **iv. Mineral deposits**

The ICJ in *North Sea Continental Shelf* cases (1969) stated that the location of natural resources is not really relevant to delimitation, as their existence is more an issue of

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<sup>295</sup> See also the dissenting opinion of Judge Prosper Weil in *St Pierre and Miquelon* (1992) at p. 1206, para. 24, in which he referred to the uncertainties involved in deciding which are indeed the relevant coasts to take into account, and how they are to be measured. He illustrated such vagueness by stating that one possible approach to measurement is, for instance, taking every sinuosity of the coast into account, while another approach measures in a more simplified and therefore more arbitrary way along the general direction of the coast.

“eventual exploitation”.<sup>296</sup> This is particularly understandable in the context of the case itself, where the precise location of the natural resources in question had not yet even been fully ascertained. However, the Judgment goes on to state that there is no legal limit to the factors states should consider when ensuring that they apply equitable procedures to delimitations by agreement, and the process involves a balancing of all the considerations which will be different in every case. One such factor is said to be the “idea of the unity of any deposits”.<sup>297</sup> However, the ICJ stated that it did not consider that the unity of a deposit constitutes “anything more than a factual element which it is reasonable to take into consideration in the course of negotiations for a delimitation”.<sup>298</sup> In the common situation where a single deposit lies on both sides of a boundary dividing the continental shelf between two states and which can be exploited from both sides of the boundary, entailing a risk of “prejudicial or wasteful exploitation” by either or both states, agreements for joint exploitation were said to be an appropriate solution. Therefore the issue of the unity of a deposit can be dealt with by means of agreement for exploitation or apportionment of resources, but was not found to be a relevant circumstance as such in respect of delimitation of boundaries. Rather, the ICJ referred to natural resources in the continental shelf areas under consideration as a factor amongst others to be taken into account when delimiting the boundary.

In *Tunisia/Libya* (1982) the ICJ stated that “[as] to the presence of oil-wells in an area to be delimited, it may, depending on the facts, be an element to be taken into account in the process of weighing all relevant factors to achieve an equitable result.”<sup>299</sup> In the first segment of the boundary line suggested by the court, which was perpendicular to the general direction of the coast, the petroleum concession areas of the two states were divided. Similarly, the ICJ in *Libya/Malta* (1985) stated that:

The natural resources of the continental shelf under delimitation “so far as known or readily ascertainable” might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation, as the Court stated in

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<sup>296</sup> Para. 17.

<sup>297</sup> Para. 94.

<sup>298</sup> Para. 97. It is important to note the words “in the course of negotiations”, as opposed to it being a matter for the adjudication process to take into account.

<sup>299</sup> Para. 107.

the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 54, para. 101 (D) (2)).<sup>300</sup>

In the *St Pierre and Miquelon* (1992) Arbitration the Tribunal noted the interest in “potential” hydrocarbon exploitation in areas of overlapping claims between the Parties, but there had not yet been any drilling undertaken. Therefore the tribunal found “no reason” to consider the potential mineral resources as having a bearing on the boundary delimitation.<sup>301</sup> Therefore, like *Libya/Malta* (1985) the actual, rather than hypothetical, presence of resources was an important distinguishing factor in whether such resources could constitute relevant circumstances. In *Cameroon v Nigeria* (2002) the ICJ also made clear that the presence of mineral resources in themselves are not sufficient to constitute relevant circumstances, and decided that:

oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account.<sup>302</sup>

It may be concluded from the above that only in very narrow circumstances will the presence of mineral resources constitute relevant circumstances to be taken into account in delimitation. The approach in *Cameroon v Nigeria* (2002) was approved in *Guyana v Suriname* (2007), a case in which the Tribunal recognised that there is “a marked reluctance of international courts and tribunals to accord significance to the oil practice of the parties in the determination of the delimitation line.”<sup>303</sup> The Tribunal found no evidence of such agreement between the parties before it. The Tribunal in *Barbados v Trinidad and Tobago* (2007) followed the same approach.<sup>304</sup>

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<sup>300</sup> Para. 50.

<sup>301</sup> Para. 89.

<sup>302</sup> Para. 304.

<sup>303</sup> (2007) 139 ILR 566, para. 390.

<sup>304</sup> (2006) 45 ILM 798, para. 364.

**v. General economic considerations, fisheries, landmass, security and navigation**

In *Tunisia/Libya* (1982) Tunisia argued economic considerations should be taken into account, namely the poverty of its natural resources in comparison with those of Libya, as well as its historic rights. Libya argued that the presence or absence of oil or gas in the oil wells in the continental shelf areas appertaining to either Party should play an important part in the delimitation process.<sup>305</sup> The ICJ rejected that such economic factors were relevant for the delimitation of the continental shelf appertaining to each party, stating:

these economic considerations cannot be taken into account for the delimitation of the continental shelf appertaining to each Party. They are virtually extraneous factors since they are variables which unpredictable national fortune or calamity, as the case may be, might at any time cause to tilt the scale one way or the other. A country might be poor today and become rich tomorrow as a result of an event such as the discovery of a valuable economic resource.<sup>306</sup>

In *Libya/Malta* (1985), despite Malta's arguments based upon disadvantages of its economic position and its lack of energy resources, the relative economic strength of states was held to be an irrelevant factor in respect of delimitation.<sup>307</sup> The ICJ stated that:

The Court does not however consider that a delimitation should be influenced by the relative economic position of the two States in question, in such a way that the area of continental shelf regarded as appertaining to the less rich of the two States would be somewhat increased in order to compensate for its inferiority in economic resources. Such considerations are totally unrelated to the underlying intention of the applicable rules of international law.<sup>308</sup>

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<sup>305</sup> Para. 106.

<sup>306</sup> Para. 107.

<sup>307</sup> Para. 50.

<sup>308</sup> Para. 50.

Having heard the Parties' arguments relating to their impoverished status in relation to their lack of resources, the Tribunal in *Guinea/Guinea Bissau* (1985) decided that while both States are developing countries with economic and financial difficulties to contend with, it would not be equitable to base a delimitation "on the evaluation of data which changes in relation to factors that are sometimes uncertain".<sup>309</sup> The Tribunal further stated:

The fact is that the Tribunal does not have the power to compensate for the economic inequalities of the States concerned by modifying a delimitation which it considers is called for by objective and certain considerations. Neither can it take into consideration the fact that economic circumstances may lead to one of the Parties being favoured to the detriment of the other where this delimitation is concerned.<sup>310</sup>

In *Tunisia/Libya* (1982), the ICJ considered Tunisia's historic fishery rights, stating that "[h]istoric titles must enjoy respect and be preserved as they have always been by long usage".<sup>311</sup> The ICJ confirmed that in principle Tunisia's historic fishery rights may be relevant for the delimitation decision.<sup>312</sup> However, in that case they were held not to be a relevant circumstance, because the delimitation line as drawn did not have any impact upon those rights as claimed by Tunisia.

In relation to the third segment of the delimitation line in *Gulf of Maine* (1984) the Chamber considered the Georges Bank, and the claims to its resources by both the Parties. Its economic importance to the Parties lay both in the potential resources in its subsoil as well as its fisheries resources. The Chamber considered the Parties' fishery interests and other circumstances which related to "human and economic geography".<sup>313</sup> The Chamber stated that such circumstances are irrelevant as criteria to be applied in the delimitation process itself, but may "be relevant to assessment of the equitable character of a delimitation first established on the basis of criteria borrowed from physical and political geography".<sup>314</sup> The Chamber went on to clarify as follows:

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<sup>309</sup> Para. 122

<sup>310</sup> Para. 123.

<sup>311</sup> Para. 100.

<sup>312</sup> Para. 102.

<sup>313</sup> Para. 232.

<sup>314</sup> Para. 232.

the respective scale of activities connected with fishing – or navigation, defence or, for that matter, petroleum exploration and exploitation – cannot be taken into account as a relevant circumstance or, if the term is preferred, as an equitable criterion to be applied in determining the delimitation line. What the Chamber would regard as a legitimate scruple lies rather in concern lest the overall result, even though achieved through the application of equitable criteria and the use of appropriate methods for giving them concrete effect, should unexpectedly be revealed as radically inequitable, that is to say, as likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned.<sup>315</sup>

Thus according to the Chamber, matters such as fishing or economic factors, navigation or defence could be taken into account as a test of the equitableness of the result.<sup>316</sup> The Chamber did not find such an effect of radical inequity in the case before it. The Tribunal in *St Pierre and Miquelon* (1992) referred to the above passage when considering fishing rights and economic well-being, and found that the proposed delimitation would not have a “radical impact” or “catastrophic repercussions” upon the existing patterns of fishing in the relevant area.<sup>317</sup>

In the *Eritrea/Yemen Arbitration* (1999), the Parties raised the historical importance of fishing for the tribunal to consider. The Tribunal concluded that neither Party had demonstrated that the delimitation line proposed by the other would “produce a catastrophic or inequitable effect on the fishing activity of its nationals or detrimental effects on fishing communities and economic dislocation of its nationals”.<sup>318</sup> Therefore, the Tribunal considered the Parties’ “general past fishing practices”, and the “potential deprivation of fishing areas or access to fishing resources, or arising from nutritional other grounds”, and found that they had no effect on the delimitation line which it decided upon.<sup>319</sup> Another example of this reluctance

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<sup>315</sup> Para. 237.

<sup>316</sup> For discussion of this aspect, see P. Weil, ‘Geographic Considerations in Maritime Delimitation’, in Charney, J.I., and Alexander, L.M., (eds.), *International Maritime Boundaries* (Martinus Nijhoff, Dordrecht, 1993), Vol I, p. 115, at p. 118, and P. Weil, *The Law of Maritime Delimitation – Reflections* (Grotius Publications Ltd., Cambridge, 1989), at p. 261.

<sup>317</sup> Para. 85 and 87.

<sup>318</sup> Para. 72.

<sup>319</sup> Para. 73.



is *Barbados/Trinidad and Tobago* (2006) where the Tribunal did not take into account Barbados' fishing interests when determining the boundary.<sup>320</sup>

A difference in landmass between the states is irrelevant, as was made clear in *Libya/Malta* (1985).<sup>321</sup>

In contrast with the previous cases dealing with arguments related to fisheries, in *Greenland and Jan Mayen* (1993), the fishery resources of the area were seen as a relevant circumstance which operated to adjust the provisional median line drawn. The line was pushed towards Jan Mayen as a result giving Greenland "equitable access to the capelin stock".<sup>322</sup> The difference in treatment may result from the fact that the ICJ was delimiting the fisheries zone separately from the continental shelf and therefore fishery resources played a far more prominent role.

It is of particular interest however, that despite the Chamber's Judgment on the relevance of the Parties' claims to the fishing resources in *Gulf of Maine* (1984), the line which it eventually drew provided an apportionment of the resources roughly in accordance with each party's established dependence.<sup>323</sup> This suggests that economic factors may well have played an unstated role in the case. In relation to this aspect of the *Gulf of Maine* (1984) Judge Weil in his dissenting opinion in *St Pierre and Miquelon* (1992) stated that:

It is also obvious that in the Gulf of Maine case fishery resources played a decisive role - and one which was moreover admitted in part: for does the Judgment not state that the Georges Bank was "the real subject of the dispute ... the principal stake in the proceedings, from the viewpoint of the potential resources of the subsoil and also, in particular that of fisheries that are of major economic importance"? One cannot escape the impression that the socio-economic factors identified at great length in paragraphs 238 to 241 of the 1984 Judgment as a means of verifying the result were, very precisely, the factors which - without it being said - directly inspired the maritime boundary line... One cannot escape the impression that the socio-economic factors identified at great length in paragraphs 238 to 241 of the 1984 Judgment as a means of verifying the result were, very precisely, the factors which - without it being said - directly inspired the maritime boundary line.<sup>324</sup>

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<sup>320</sup> Para. 269.

<sup>321</sup> Para. 49.

<sup>322</sup> Para. 76.

<sup>323</sup> Kwiatkowska, (1993), p. 79.

<sup>324</sup> p. 1211, para. 34.

More generally, he stated explicitly what has been discernible only implicitly from the case law that:

one cannot, without plunging into artifice and fiction, completely eliminate economic and socioeconomic considerations from the balance of equities; this would be all the more paradoxical in that exploration for and exploitation of resources are at the root of the concepts of continental shelf, fishing zone and exclusive economic zone.<sup>325</sup>

With regard to the case before him, he referred to the fact that the Parties had shown that the fishery resources of the Saint Pierre Bank constituted the main issue which had been debated extensively. He stated that:

By confining itself to an a posteriori verification of the absence of "catastrophic repercussions" of the delimitation decided on other grounds, the Decision (paras. 83 and 84), like the Gulf of Maine Judgment before it, is to some extent hiding behind its own shadow.<sup>326</sup>

It for this reason that Evans is of the view that "the role of economic factors is destined to remain a 'hidden hand' for some while to come".<sup>327</sup>

In *Guinea/Guinea Bissau* (1985), the Tribunal also rejected the Parties' arguments relating to security and defence as factors to take into account in respect of the boundary delimitation.<sup>328</sup> The ICJ also did this in *Libya/Malta* (1985), although stated that security considerations are "not unrelated to the concept of the continental shelf".<sup>329</sup> Similarly, both the UK and France in the *Anglo-French Arbitration* (1977)

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<sup>325</sup> P. 1211, para. 34.

<sup>326</sup> P. 1211, para. 34.

<sup>327</sup> Evans (2015), p. 275.

<sup>328</sup> Paras. 124-5. However, B. Kwiatkowska points to the reality of the decision in *Guinea/Guinea Bissau*, in that the Tribunal, although it did not do so explicitly, "took account of the navigational interests of Guinea-Bissau and adopted a boundary line that follows the thalweg in its initial section and allows for free access through the Orango Channel that the Guinean claim would have cut across." See "Economic and Environmental Consideration in Maritime Boundary Delimitation", Charney, J.I., and Alexander, L.M., (eds.), *International Maritime Boundaries* (Martinus Nijhoff, Dordrecht, 1993), Vol I, p. 75, at p. 99.

<sup>329</sup> Para. 51.

invoked navigational, defence and security interests as relevant equitable considerations, but the Tribunal held that they had no decisive influence on the boundary. More recently, in *Nicaragua and Colombia* (2012), the ICJ effectively dismissed security concerns as being relevant to delimitation, although in a rather general and assuaging statement it did state that

security concerns might be a relevant consideration if a maritime delimitation was effected particularly near to the coast of a State and the Court will bear this consideration in mind in determining what adjustment to make to the provisional median line or in what way that line should be shifted.<sup>330</sup>

It remains to be seen from the case law precisely how and when security interests could be used to adjust a provisional equidistance line.

### **Delimitation of the EEZ/EFZ**

There are certain considerations which are pertinent to delimitation of the EFZ/EEZ. The main one is that economic factors are far more likely to be relevant.<sup>331</sup> This was made clear in *Greenland v Jan Mayen* (1993) when the Chamber took account of the need to ensure equitable access to Capelin stocks when determining the EFZ boundary.<sup>332</sup> Another consideration was articulated by the Chamber in *Gulf of Maine* (1984). It stated that where a line which follows a complicated or zig zag course may be appropriate to delimit the continental shelf, and therefore delineate the location for states' exploration of resources attached to the sea bed and subsoil, such a line is less appropriate for the delimitation of the waters of an EEZ or EFZ. This is because a more constant line is required so that those engaged in fishing do not have to constantly check their position in relation to a complicated line.<sup>333</sup>

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<sup>330</sup> [2012] ICJ Rep 624, para. 222.

<sup>331</sup> This proposition may be said to have its origins in the *Anglo-Norwegian Fisheries* case [1951] ICJ Rep 116; see for example p. 142.

<sup>332</sup> Para. 76.

<sup>333</sup> Para. 202.

A further factor to note is that case law has demonstrated that in respect of a single maritime boundary, “neutral” factors relevant to both delimitation of the continental shelf and EEZ will be necessary in order to operate as relevant circumstances. In general, these will be geographical, and not, for example, those related to the water column, such as fisheries.

### **Conclusions in respect of the case law**

Firstly, although there is no doctrine of precedent in the case law of the ICJ or the International Tribunals, it is possible to say that there are recognizable trends and even current general legal principles which may be identified in the case law, particularly the most recent case law. The emergence of recognizable trends is clear despite the fact that the body of case law has emanated not only from the ICJ but also from various tribunals. Whether there are differences of approach between the different fora is an important matter for investigation, but is outside the scope of this study.<sup>334</sup>

Secondly, it is apparent that there still remains some fluidity with regard to the practical process of effecting a delimitation, and this is seen in the more recent emergence of a focus upon the equitable solution. Even where a provisional equidistance line has been drawn, this has been heavily departed from in the final result, for instance in *Bangladesh/India* (2014). This trend is a continuation of the equidistance versus equitable principles debate, so clearly apparent during UNCLOS III and which crippled its negotiations, and which is still apparent today in the case law. Thirdly, in line with Articles 74(1) and 83(1) LOSC 1982 an equitable solution remains the final aim of delimitation, and this is furthered by the use of the equidistance line as the provisional starting point.<sup>335</sup>

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<sup>334</sup> The ICJ and Arbitral Tribunals have a different remit. Evans raises the issue of whether this has any real impact on the case law and expresses the view that the ICJ’s Judgments are the most authoritative and therefore this does have an effect on case law: see M.D. Evans, “Maritime Boundary Delimitation: Where Do We Go From Here?” in D. Freestone, R. Barnes and D. Ong, *The Law of the Sea. Progress and Prospects* (Oxford University Press, Oxford, 2006), p. 137, at pp.141-143. Nevertheless, this thesis suggests that particularly more recent case law has assisted in creating a recognisable body of principles.

<sup>335</sup> For a discussion of the interrelationship between equitable principles and equidistance, and the manner in which both concepts compliment each other in the case law, see T. Cottier, *Equitable Principles of Maritime Boundary Delimitation. The Quest for Distributive Justice in International*

Fourthly, in general there is a recognition in the case law that the existence of natural resources may be relevant to the process of carrying out delimitation although such statements are often heavily qualified, and wider economic considerations are in general irrelevant to the delimitation of the continental shelf. It is highly arguable that in relation to mineral resources in particular, the case law shows some readiness to consider the presence of these relevant for the purposes of effecting a delimitation. This aspect is to become of relevance in the later chapters of this thesis.

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*Law* (Cambridge University Press, Cambridge, 2015), p. 353.

## **Chapter 4**

### **Law of the Sea in the Gulf:**

#### **National Legislation on Baselines, the Territorial Sea and the Contiguous Zone (the 1930s to the present)**

##### **Introduction**

In this chapter, the national legislation of the Gulf States in relation to baselines, the territorial sea and the contiguous zone is examined by state in order that each state can be examined separately. Further, observations are made in respect of the relationship between each state's legislation and international law, and the degree of conformity with the latter.

In the following chapter, Chapter 5, the same exercise is undertaken in respect of legislation in relation to the continental shelf and the EFZ/EEZ. All relevant legislation of the Gulf States known to author has been examined and considered in this chapter and the following chapter, in order to provide an evidential basis for the eventual conclusions of this study.

Below is a table of the years in which the Gulf States issued domestic legislation on their maritime zones and delimitation in respect of the Gulf Sea, encompassing all maritime zones.<sup>336</sup>

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<sup>336</sup> This table includes some significant official announcements made through the U.N., although does not include Declarations made by states on ratification of the LOSC 1982.

State	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s	2010s
Iran	1934		1955 1959		1973		1993		
Iraq			1956 1957 1958		1973				2011
Kuwait		1949		1967	1971				2014
Saudi Arabia	1930	1949	1958		1974				2010 2012
Bahrain		1949					1993		
Qatar		1949			1974		1992		
U.A.E.						1980	1993	2009	
Dubai		1949							
Abu Dhabi		1949							
Sharjah		1949		1969	1970				
Um Al Qaiwain		1949							
Ras Al Khaimah		1949							
Ajman		1949							
Oman					1972 1977	1981 1982			

Figure 9: Table of years in which Gulf States issued national legislation on maritime zone limits and delimitation, including some official announcements on legislation

## **Saudi Arabia**

Saudi Arabia was the first Gulf state to issue legislation governing the breadth of its territorial sea. In Article 2 of the Customs Law of 29 June 1930, a boundary zone was established, extending “at the sea coast to a distance of four miles into the sea”.<sup>337</sup>

In Decree No. 6/4/5/3711 of 28 May 1949, defining the territorial waters of the Kingdom, the territorial sea was defined as extending for a distance of 6nm (Article 5), and therefore was increased further from the 4nm legislated for in the previous decade.<sup>338</sup> Following the 1930 Hague conference, where the majority of the states sought a breadth of 3nm, states gradually sought to claim wider territorial seas so that at the Second U.N. Conference on the Law of the Sea in 1960, a proposal for a 6nm territorial sea (as well as an additional 6nm fishery limit) failed to be adopted by only one vote.<sup>339</sup>

Article 9 claims a contiguous zone outside the territorial sea, extending for a further distance of 6nm. This zone was said to be for the purpose of ensuring compliance with the laws of the Kingdom relating to security, navigations, and fiscal matters.

Article 1 states that the term “bay” “includes any inlet, lagoon or other arm of the sea”. This is clearly quite a broad description and lacks any of the specific detail which would eventually form Article 7 TSCZ 1958 and which was repeated almost *verbatim* in LOSC 1958, as referred to in Chapter 2. By way of context, which explains the lack of detail, customary international law prior to the existence of the first of these conventions did not provide a clear answer to the question of which

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<sup>337</sup> Referred to in (1951) 1 U.N. Leg. Ser. 89 (Note). However, F.M.J. Al-Muwaleed, *Maritime Boundary Delimitation of the Kingdom of Saudi Arabia. A Study in Political Geography* (PhD Thesis, University of Durham, 1993) states at p. 68 that the breadth of the territorial sea was first established at 4nm by the 22 July 1932 Fishing and Sea Shells Regulations.

<sup>338</sup> (1951)1 U.N. Leg. Ser. 89. Drafted by the Aramco legal research team. The entire Decree is reproduced in H.J. Liebesny, “Legislation on the Sea Bed and Territorial Waters of the Persian Gulf” (1950) 4 *The ME Journal* 94. The 1949 Decree dealing with the territorial sea was eventually revoked by the Royal Decree concerning the territorial waters of the Kingdom of Saudi Arabia (Royal Decree No.33 of 16 February 1958), at (1970) 5 U.N. Leg. Ser. 114.

<sup>339</sup> Churchill and Lowe (1999), p. 79.



indentation of a coast would constitute a bay, nor also the maximum length of the closing line of a bay. Therefore the Saudi position was consistent with this lack of specificity in customary international law at the time.

Article 1 states that the term “island” “includes any islet, reef, rock, bar or permanent artificial structure not submerged at lowest low tide”. This is a far broader description than that which was current in customary international law, and which eventually found its way into Article 10(1) TSCZ 1958, repeated in Article 121(1) LOSC 1982, namely that an island is “a naturally formed area of land, surrounded by water, which is above water at high tide”. Thus the Saudi version is broad enough to include the concept of the low-tide elevation which is defined in the Conventions as “a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide” (Article 11(1) TSCZ 1958, Article 13(1) LOSC 1982). The Saudi definition does not draw this distinction. As seen in Chapter 2, the distinction is important in international law as there are differing consequences pertaining to whether a feature is classified as an island or a low-tide elevation. It is also interesting that the term “island” includes a “rock”, which, again, is a separate concept which was to emerge in LOSC 1982 with its own distinct features and significance.

Article 1 of the 1949 Saudi Decree refers to a further concept which does not appear in the conventions, namely a “shoal” which “denotes an area covered by shallow water, a part of which is not submerged at lowest low tide”.

Article 4 defines the inland waters of the Kingdom as including: (a) the waters of bays along the coast; (b) waters above and landward from any shoal not more than 12nm from the mainland or from a Saudi Arabian island; (c) waters between the mainland and a Saudi Arabian island not more than 12nm from the mainland; and (d) waters between Saudi Arabian islands not farther apart than 12nm. In combination with Article 6, which is dealt with below, these provisions operate to increase the area of internal waters.

Article 6 sets out quite detailed provisions on baselines from which the territorial sea was to be measured, in various geographical circumstances. Article 6(a) states that where the coast of the mainland or an island is fully exposed to the open sea, the baseline would be ‘the lowest low-water mark’. This is similar to Iran’s position in its Act of 1934, and generally reflective of customary international law at the time. What follows in Article 6 is a rather comprehensive set of rules establishing

straight baselines. In the case of a bay, the baseline would be a line drawn “from headland to headland across the mouth of a bay” (Article 6(b)). This provision is characterized by vagueness in the sense that there is no attempt to establish the maximum length of the closing line of a bay, although it will be remembered that customary law at the time was affected by the same uncertainty. Article 6(c) states that where a shoal is situated not more than 12nm from the mainland or a Saudi Arabian island, the baseline would be drawn from the mainland or the island and along the outer edge of the shoal. Article 6(d) states that where a port or harbour confronts the open sea, baselines are to be drawn along the seaward side of the outermost works of the port or harbour and also between such works.

Article 6 continues with provisions dealing with straight baselines around islands. Where an island is not more than 12nm from the mainland, the baseline is made up of lines drawn from the mainland and along the outer shores of the island (Article 6(e)). Article 6(f) states that where there is an island group which may be connected by lines not more than 12nm long, of which the island nearest to the mainland is not more than 12nm from the mainland, the baselines are those drawn from the mainland and along the outer shores of all the islands of the group if the islands form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain. Article 6(g) states that where there is an island group which may be connected by lines not more than 12nm of which the island nearest to the mainland is more than 12nm from the mainland, the baselines are lines drawn along the outer shores of all the islands of the group if the islands form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain.

Like Iran in its 1934 Act, therefore, Saudi Arabia provided for a system of straight baselines before the ICJ Judgement in the *Anglo-Norwegian Fisheries* case (1951), and was influenced by the Norwegian approach to the question which predated the ICJ decision. However, the effect of such provisions is that potentially very wide areas of waters could be classed as internal waters, which in turn could cause the outer limit of the territorial sea to extend further out than would otherwise be the case. The US State Department issued a formal reservation dated 30 November 1949 protesting that the Decree breached international law regarding details about internal

waters on which the baseline was drawn, as well as the 6nm territorial sea claimed.<sup>340</sup> At this time, both the US and British governments still upheld a 3nm territorial sea. However, the US Judge Hudson, acting on behalf of the Arabian American Oil Company (Aramco), and advising the Saudi Government, maintained his contention that there were many conflicting rulings on this point; in the Gulf the Ottomans had declared 6 miles in 1914, and in 1934 Iran had also done so without objection from the US Government.<sup>341</sup>

Article 8 deals with delimitation of the territorial sea in the event that it overlaps with the waters of another state, with the provision that “boundaries will be determined by Saudi Arabia in agreement with the State concerned in accordance with equitable principles”. At the time, state practice generally made use of the equidistance line when it came to delimitation of the territorial sea between states with opposite coasts, although with adjacent states, the position was less consistent.<sup>342</sup>

The Royal Decree of 28 May 1949 was repealed by the Royal Decree concerning the Territorial Waters of the Kingdom of Saudi Arabia (Royal Decree No.33) of 16 February 1958.<sup>343</sup> The TSCZ 1958 and CSC 1958 were open for signature some two months later on 29 April 1958.

A major new development in the 1958 Decree is that Article 4 increased the breadth of the territorial sea to 12nm. This claim of 12nm occurred when a majority of states internationally claimed territorial seas of less than 12nm, for example as seen in the Second U.N. Conference on the Law of the Sea in 1960. Article 5(a) states that the “lowest low-water mark” is the standard baseline as it was in the 1949 Decree.

Another major difference is that while in the 1949 Decree, the territorial waters were said to include the inland waters, Article 4 of the 1958 Decree specifically excludes the inland waters from the territorial sea. The rest of the Decree is largely the same as the 1949 Decree, including the provision on delimitation of the territorial

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<sup>340</sup> , J.C. Wilkinson, *Arabia's Frontiers: The Story of Britain's Boundary Drawing in the Desert*, (I.B. Tauris & Co Ltd, London, 1991, reprinted New York, 1993), p. 242.

<sup>341</sup> *Ibid.*, p. 242.

<sup>342</sup> Churchill and Lowe (1999), p. 182.

<sup>343</sup> Reproduced in (1970) 15 U.N. Leg. Ser. 114 and published in the Official Gazette (Umm al Qura, No. 1706 of 21 February 1958). English text of the Decree provided by the Permanent Mission of Saudi Arabia to the U.N.

sea being effected by agreement with other states in accordance with equitable principles (Article 7 of the 1958 Decree). This is a repetition of the provisions of Saudi Arabia's 1949 Decree on the Territorial Sea, and shows a disinclination to mirror Article 12 of TSCZ 1958 which refers to delimitation between two states' territorial sea to be undertaken, failing agreement between the parties, by the equidistance line, unless justified by matters of historic title, or other special circumstances. Thus "equitable principles" were the benchmark for the delimitation of the territorial sea and the continental shelf in 1949, as will be seen in the following chapter, as well as for the territorial sea in 1958.

Despite the emergence of the 1958 Conventions, the vagueness of the definitions in Article 1 as identified above in relation to the 1949 Decree on the Territorial Sea continued in the 1958 Decree. Therefore, a bay is extremely widely defined as including "any inlet, lagoon or other arm of the sea" and does not have to meet the strict requirements in Article 7 TSCZ 1958, such as the indentation will only be regarded as a "bay", if "its area is as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of that indentation". In addition, the Saudi legislation does not stipulate the requirement in Article 7(4), (5) TSCZ 1958 that bay closing lines of not more than 24 miles may constitute baselines. Such observations were made by the US Department of State in 1970 of the 1958 Decree, finding that '[v]irtually all indentations of the coast may be enclosed by bay closing lines.'<sup>344</sup>

The Saudi definition of island was also analysed by the US Department of State which stated the following:

By this definition "drying rocks" or even "rocks awash" qualify as islands which may be utilized for the measurement of the territorial sea or drawing straight baselines...a "shoal," basically an underwater area, equates with an "island" if the shoal possesses one drying rock.

Article 5 sets out the baselines, from which the territorial sea is measured, and in so doing, reiterates Article 6 of the Decree of 1949. The observations made above with regard to vagueness associated with the drawing of the straight baselines also apply to this Decree. Looking more closely at these provisions in the light of international

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<sup>344</sup> *Limits in the Seas*, No. 20, "Straight Baselines: Saudi Arabia", International Boundary Study Series A (Office of the Geographer, US, June 8, 1970), pp. 4-5.

law in the 1950s, it is possible to analyse how divergent the Saudi legislation is. The *Anglo-Norwegian Fisheries* case (1951) had already been decided, the effect of which had been incorporated in Article 4 of the TSCZ 1958, yet the 1959 Decree merely repeated the 1949 provisions on straight baselines.

It is useful to compare the Saudi provisions with Article 4 TSCZ 1958 at this point (repeated in LOSC 1982). Article 4(1) states that where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be used. There is no suggestion in the Saudi legislation of these pre-requisites. Indeed, the Saudi coastline in the Gulf does not at all resemble the very indented coastline of Norway, whose straight baselines were held by the ICJ to be consistent with customary international law. Article 4(2) TSCZ 1958 states that the drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters. There is no equivalent Saudi provision.

Article 4(3) further states that baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them. There is no reference in the Saudi legislation to low-tide elevations. There is a reference to an “island” which as we have seen previously is defined more widely than in TSCZ 1958 (or LOSC 1982), and there is use of the concept of a “shoal”. As has been seen previously, a “shoal” is also defined in Article 1 of the 1958 Decree as “an area covered by shallow water, a part of which is not submerged at low tide”. This is not in accordance with a “low-tide elevation”, defined in Article 11(1) TSCZ 1958 (and also Article 13(1) LOSC 1982) as “a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide”. Therefore a “shoal” may be partly submerged at low tide, while a low-tide elevation may not be. The distinction is significant. The Saudi Article 5(c) therefore goes further than international law in providing that a straight baseline may be drawn from the mainland or an island along the outer edge of the shoal where it is not more than 12nm away from them, and as observed by the US Department of State, the Decree “permits the use of the outer edge of the shoal and

not just the "drying rock" for the limit of the straight baseline/baseline for the territorial sea".<sup>345</sup>

Looking at the concept of the shoal, the standard definition is that "shoals are shallow features submerged at all levels at the tide".<sup>346</sup> There is no provision in any of the Conventions for shoals to be used as points of the baselines, whether normal or straight.<sup>347</sup> Even if a "shoal" could be said to be comparable in part to a low-tide elevation in the sense of the Conventions, there is no requirement as set out in the Conventions that a straight baseline drawn to and from a low-tide elevation is only permissible where lighthouses or similar installations which are permanently above sea level have been built on them or where the drawing of baselines to and from such elevations has received general international recognition.

Article 5(d) of the Saudi Decree states that where a port or harbour faces the open sea, baselines are to be lines drawn along the seaward side of the outermost works of the port or harbour and between such works. This is a wider provision than Article 8 TSCZ 1958 which states that it is the "outermost permanent harbour works which form an integral part of the harbour system [which] shall be regarded as forming part of the coast". Article 5 (e) and (f) of the Saudi Decree which correspond to Article 6(e) ,(f) of the 1949 Decree have no basis in TSCZ 1958.

Article 4(3) TSCZ 1958 states that "baselines shall not be drawn to and from low tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them". There is no such limitation in the Saudi legislation. Article 4(4) TSCZ 1958 goes on to state that where the method of straight baselines is applicable under Article 4(1), account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by a long usage. There is no such equivalent Saudi provision. Article 4(5) TSCZ 1958 states that the system of straight baselines may not be applied in such a manner as to cut off from the high seas the territorial sea of another state. Again, there is no Saudi equivalent.<sup>348</sup> Article

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<sup>345</sup> *Ibid.*, p.5.

<sup>346</sup> *Limits in the Seas*, No. 61, 'Straight Baselines: Oman (Hypothetical)', International Boundary Study Series A (the Office of the Geographer, US, June 4, 1975), p. 5.

<sup>347</sup> Article 6 LOSC 1982 provides that in the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State. These are quite limited circumstances allowing for reefs to be utilized in this way. The Saudi legislation does not reflect these limitations. There is no reference to reefs in the TSCZ 1958.

<sup>348</sup> There are no high seas in the Gulf sea.

4(6) TSCZ 1958 states that the state must clearly indicate straight baselines on charts to which due publicity must be given.<sup>349</sup>

As observed by the US Department of State, the Decree allowed for “unlimited extension of the inland waters through the use of extended straight baselines.”<sup>350</sup> Further, it was stated that:

‘If the Saudi decree were rigorously applied, it would appear that, with the exception of the Gulf of Aqaba, virtually all of the state coasts would be bordered by straight baselines. These would extend from 12 to 20 nautical miles from the coast.’<sup>351</sup>

Nevertheless, it is important to note that the width of the internal waters is restricted by the limit of 12nm in Article 5(e), (f) and (g) of the 1959 Decree.

Article 5(2) TSCZ 1958 states that where straight baselines have the effect of enclosing as internal waters areas which previously had been considered a part of the territorial sea or the high seas, a right of innocent passage, as provided in Article 14-23 shall exist in those waters. Looking at Article 6 of the 1959 Decree it is stated that if the measurement of the territorial sea in accordance with the Decree leaves an area of high sea wholly surrounded by the territorial sea and extending not more than 12nm in any direction, such area shall form part of the territorial sea. Article 6 further states that the same rule shall apply to a pronounced pocket of high sea which may be wholly enclosed by drawing a single straight line not more than 12nm in length. Article 8, as previously provided by Article 9 of the 1949 Decree, claims a 6nm contiguous zone to ensure compliance with laws of the Kingdom relating to security, navigation, fiscal, and, mentioned for the first time in the 1958 Decree, health matters. Article 24 of TSCZ 1958 establishes a 12nm contiguous zone for the purpose of exercising control to prevent infringement of customs, fiscal, immigration or sanitary regulations within its territory or territorial sea. Therefore Saudi Arabia’s reference to security and navigation go beyond what is provided for in the 1958 Convention.

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<sup>349</sup> Saudi Arabia defined the location of its straight baselines in 2010.

<sup>350</sup> *Limits in the Seas*, No. 20 (1970), p. 5.

<sup>351</sup> *Ibid.*, p.5.

Saudi Arabia issued Council of Ministers' Resolution No. (15) dated 25 January 2010 which attached a draft Royal Decree No. (M/4) dated 26 January 2010, in which straight baselines in the Gulf were declared according to lists of geographical coordinates.<sup>352</sup> This was issued in pursuance of Article 16(2) LOSC 1982. The UAE objected to the straight baselines claimed.<sup>353</sup> Saudi Arabia replied stating that the baselines are "in strict conformity with International Law and states' practices".<sup>354</sup> Iran also protested against Saudi Arabia's baselines as set out in the 2010 legislation. Iran stated that while it reserved its position as to the validity of Saudi Arabia's baselines under customary international law, they breached the rules in TSCZ 1958 and LOSC 1982. Iran noted in particular Article 7(3) LOSC 1982 which states that the drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Iran further noted that a number of basepoints defining the Saudi baselines in the Gulf are located in open waters and therefore contravene international law.<sup>355</sup>

The Statute of Maritime Delimitation of the Kingdom of Saudi Arabia of 13 December 2012 was issued as a comprehensive promulgation on the topic.<sup>356</sup> However, it is of particular interest that, despite its title, the Statute does not deal with delimitation of Saudi Arabia's maritime zones.

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<sup>352</sup> Transmitted by note verbale No. UN/SG/Treaty/191 dated 5 March 2010, from the Permanent Mission of Saudi Arabia to the Secretary-General of the U.N. at (2010) 72 *LOS* 81-8. In this legislation Saudi Arabia also claimed straight baselines in the Red Sea and the Gulf of Aqaba.

<sup>353</sup> For example, see Memorandum of Ministry of Foreign Affairs of UAE 3/6/2 368 dated 5 May 2010, sent to the Secretariat of U.N. The UAE subsequently expressed its objections once more, stating that "these baselines cut off areas of the territorial sea of the United Arab Emirates in a manner inconsistent with the requirements of international law." See (2012) 78 *LOS* 32.

<sup>354</sup> See (2011) 76 *LOS* 37.

<sup>355</sup> See Iran's note verbale dated 14 August 2012 addressed to the Secretary-General of the U.N., at (2012) 80 *LOS* 36 and a further note verbale dated 20 February 2013, Annexe 1 at (2014) 81 *LOS* 25-6. Saudi Arabia replied in an Annexe to a note verbale dated 14 March 2013 from the Permanent Mission of Saudi Arabia to the Secretary-General of the U.N., again asserting that the straight baselines are "fully consistent with the rules of international law and State practice." See (2014) 81 *LOS* 28.

<sup>356</sup> (2012) 70 *LOS* 15.



a. Baselines and the territorial sea

Article 1 states that the maritime baseline of the Kingdom in the Red Sea, Gulf of Aqaba and the Arab Gulf is delineated in accordance with the LOSC 1982.

Article 4 states that with respect to the territorial sea, the Kingdom exercises sovereignty in accordance with the provisions of the LOSC 1982 and other rules of international law. Article 5(1) confirms that the territorial sea extends 12nm measured from the baselines. With respect to its outer limit, this is said to be the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea (Article 5(2)).

iii. The contiguous zone

Article 11(1) states that the contiguous zone extends for 12nm from the outer limit of the territorial sea. Article 11(2) states that the Kingdom shall exercise necessary control and monitoring for (a) prevention of infringement of the Kingdom's regulations relating to security, environment, navigation, customs, taxes, immigration, or sanitary laws and regulations within the territory of the territorial sea, and (b) the punishment of any infringement of the aforementioned laws and regulations committed within the territory of the Kingdom or its territorial sea. It is of interest that the wording contained in Article 11(2)(a) is similar to the corresponding Article in Iran's 1993 Law. There is no provision for the delimitation of the contiguous zone which is in keeping with the absence of such provision in LOSC 1982.<sup>357</sup>

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<sup>357</sup> As seen in Chapter 2 this is explicable on the basis that the contiguous zone is now part of the EEZ, and therefore the issue of the former's delimitation has been subsumed within the latter's.

## **Observations on the legislation of Saudi Arabia and the degree of its conformity with international law**

Saudi Arabia, from its inception, unhindered by a colonial past, was free to legislate as it wished on matters of law of sea. It was active and also innovative from the 1930s in establishing the breadth of its territorial sea as 4nm at a time when a 3nm was being advocated by Western powers including Britain. Further, in the 1949 Decree a 6nm territorial sea was claimed, and in light of the majority of states claiming the same at UNCLOS II in 1960, Saudi Arabia was clearly abreast with international developments in this regard. In 1958 Saudi Arabia claimed a 12nm territorial sea, which, as a zone of that breadth, was not encapsulated in treaty form until LOSC 1982 and so again was ahead of the international community in this regard. Both Saudi Arabia and, as will be seen in the next section of this chapter, Iran, were ahead of the other Gulf States in the 1930s in terms of their maritime law-making. With regard to the breadth of the territorial sea, both Iran and Saudi Arabia's legislation were consistent with the claims being made in the international arena. At the 1930 Hague conference, although no consensus could be reached on the subject, at the final meeting of the Territorial Waters committee, twenty states sought 3 miles, twelve sought 6 miles, and the four Scandinavian states sought recognition of their historic claims of 4 miles.<sup>358</sup> Neither Saudi Arabia nor Iran were subject to any protectorate relationship with Britain, and were therefore unhindered by control over their national legislation and foreign policy. This freedom is reflected in the extension of their territorial seas beyond the 3nm advocated by, for instance, Britain and the USA. at this time, and, as has already been seen in Chapter 2, at a time when a limit for the breadth of the territorial sea had not yet been agreed by way of an international convention.

With regard to delimitation of the territorial sea, the latest legislation on the subject, namely the 1958 Decree, established that this is to be done on the basis of equitable principles. As discussed above, this did not conform with TSCZ 1958 which set out that the general rule was that equidistance was to be applicable (unless

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<sup>358</sup> R.R. Churchill and A.V. Lowe, *The Law of the Sea* (3<sup>rd</sup> ed., Juris Publishing, Manchester University Press, 1999), p. 79.

the matters of historic title or special circumstances applied). As seen in Chapter 2, delimitation of the territorial sea by way of the equidistance line was also a matter of customary law (and has continued in LOSC 1982). Therefore Saudi Arabian legislation does not conform with international law in this respect. It will be interesting to consider whether this lack of conformity extends to its legislation on delimitation of its continental shelf, which will be considered in Chapter 5 of this thesis.

Saudi Arabia claimed a 6nm contiguous zone as early as the 1949 Decree (repeated in the 1958 Decree) which itself shows an awareness to benefit from developments on the international plane. In this early Decree the purpose of such a zone was claimed to be ensuring compliance with the laws relating to security and navigation and fiscal matters. This was repeated in the 1958 Decree which added health matters to the list. Article 11(2) of the 2012 Statute expanded the list and provided for a contiguous zone for prevention of infringement of laws relating to security, environment, navigation, customs, taxes, immigration and sanitary law. Saudi Arabia claimed such a zone for purposes which went beyond the purposes of the contiguous zone set out in TSCZ 1958 and LOSC 1982, namely preventing infringements of customs, fiscal, immigration and sanitary laws in the territorial sea. It is of note that the 2012 Statute established a 12nm contiguous zone extending from the outer limit of the territorial sea, therefore bringing this zone in line with LOSC 1982.

As set out above, in the comparisons between Saudi legislation, and international law, while Saudi legislation conforms in setting the standard baseline as the low water line, its system of straight baselines established in its 1949 and 1958 Decrees goes far beyond the ICJ judgment in *Anglo-Norwegian Fisheries* (1951) and TSCZ 1958. Likewise, as also set out above in the comparisons with international law provisions, its definitions of islands and bays are also wider than international law provisions, as also observed by the US Department of State.

## **Iran**

Iran followed on from Saudi Arabia by issuing national legislation in the form of the Act of 15 July 1934 on the Territorial Waters and the Contiguous Zone of Iran.<sup>359</sup> Iran specified that its territorial sea would extend “to a distance of six nautical miles from and parallel to shore at the low-water mark” (Article 1). This was also the method specified to determine the territorial sea of its islands (Article 3). The reference to the low-water mark as the line from which the territorial sea was measured, reflected customary international law, as has been seen in Chapter 2.

As well as establishing the breadth of the territorial sea, Article 1 claimed a contiguous zone, referred to as “the zone of marine supervision”, which spanned a breadth of 12nm from the low-water mark. The right of supervision in this zone was to ensure “the operation of certain laws and conventions concerning the security and protection of the country and its interests or the safety of navigation”. This claim to a contiguous zone was well in advance of the provision of such a zone in the TSCZ 1958 which also provided for a maximum of 12nm for a contiguous zone.<sup>360</sup>

Article 2 provided for straight baselines in relation to bays. In so doing, it was stipulated that the breadth of the territorial sea outside a bay was to be measured from a straight line drawn across the opening of a bay. Where the opening of a bay exceeds ten miles, a line was to be drawn across the bay in the part nearest to the entrance at the first point where the opening did not exceed ten miles. This reflected customary law at the time that a straight baseline could be drawn across the mouth of a bay, although there were no clear criteria or rules governing how or in what circumstances this was to be done.<sup>361</sup>

In Article 3 of the 1934 Act, Iran implied the use of straight baselines in providing that islands comprising an archipelago shall be considered to form a single island, with the breadth of the territorial waters measured from the islands most remote from the centre of the archipelago. Thus it is of interest that, like Saudi

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<sup>359</sup> Act relating to the Breadth of the Territorial Waters and to the Zone of Supervision, 19 July 1934, (1951) 1 U.N. Leg. Ser. 81.

<sup>360</sup> This was extended to a maximum of 24nm in LOSC 1982.

<sup>361</sup> See Chapter 2 on baselines in respect of bays.

Arabia, Iran provided for straight baselines prior to the ICJ's Judgment in the *Anglo-Norwegian Fisheries* case (1951).<sup>362</sup>

In its Act of 12 April 1959 amending the Act of 15 July 1934 on the Territorial Waters and the Contiguous Zone of Iran, Article 3 also extended the breadth of the territorial sea to 12nm from the baseline of the territorial sea.<sup>363</sup> Article 3 further stated that the baseline of the territorial sea was to be determined by the Government "with due regard to the established rules of public international law".

Article 4 of Iran's 1959 Act states that when delimiting the boundary of the territorial sea with that of another state, whether adjacent or opposite, the boundary between the territorial seas of each state shall, unless otherwise agreed between those states, be the median line every point of which is equidistant from the nearest point on the baseline of both states.<sup>364</sup> Its occurrence here in the context of the delimitation of the territorial sea specifically, reflects Article 12(1) TSCZ 1958 and also Article 15 LOSC 1982.<sup>365</sup>

Article 5 of Iraq's 1959 Act confirms that every Iranian island, within or outside the territorial sea, has its own territorial sea determined in accordance with the provisions of the Act. This is consistent with Article 10(2) TSCZ 1958 which makes clear that an island has a territorial sea, although the breadth of the territorial sea had not yet been established in TSCZ 1958.

Further, Article 5 of Iran's 1959 Act states that islands situated at a distance not exceeding 12nm from one another, shall be considered as a single island and the limit of their territorial sea shall be determined from the islands remotest from the center of the archipelago. There is no basis for this claim to straight baselines in the TSCZ 1958.

In its Decree No. 2/250-67 of 1973, Iran refers to the baseline established in the Act of 12 April 1959 concerning the limits of the territorial sea and the contiguous zone. In the 1973 Decree Iran sets out the baseline as straight lines joining certain fixed points 1 to 25 established by their geographical co-ordinates. Further, it is stated

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<sup>362</sup> [1951] ICJ Rep 116. The international law rules governing straight baselines are discussed in Chapter 2.

<sup>363</sup> (1974) 16 U.N. Leg. Ser. 10.

<sup>364</sup> This is not the first occasion that a Gulf State's legislation refers to the principle of equidistance. See Iraq's Proclamation of 19 April 1958 referred to in Chapter 5.

<sup>365</sup> Iran signed the 1958 Convention on the Territorial Sea and Contiguous Zone on 28 May 1958 but did not ratify it. It also signed LOSC 1982 but has not yet ratified it.

that between certain points on Kish Island, on Larak Island and in the Strait of Hormuz, the low-water line shall be the baseline.<sup>366</sup>

Iran issued the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea, 1993.<sup>367</sup>

a. Baselines and the territorial sea

Article 1 declares sovereignty over the territorial sea. Article 2 confirms its breadth as 12nm, measured from the baseline, and states that Iranian islands, whether situated within or outside its territorial sea, have in accordance with this Act, their own territorial sea.

Article 3 states that in the Persian Gulf and the Oman Sea, the baseline from which the breadth of the territorial sea is measured is that determined in Decree No. 2/250-67 of 1973;<sup>368</sup> in other areas and islands, the low-water line along the coast constitutes the baseline. Article 3 goes on to confirm that waters on the landward side of the baseline of the territorial sea and waters between islands where the distance of such islands does not exceed 24nm, form part of the internal waters.

Article 4 provides that where Iran's territorial sea overlaps with that of states with opposite or adjacent coasts, the boundary line shall be, unless otherwise agreed between the two parties, the median line every point of which is equidistant from the nearest point on the baseline of both states. This provision reflects Article 15 LOSC 1982, albeit not fully.

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<sup>366</sup> (1980) 19 U.N. Leg. Ser. 55, reproduced in French; approved by the Iranian Council of Ministers on 21 July 1973.

<sup>367</sup> (1993) 24 *LOS* 10.

<sup>368</sup> Referred to earlier in this chapter.

b. The contiguous zone

Article 12 confirms that the contiguous zone is adjacent to the territorial sea, the outer limit of which is 24nm from the baseline, which accords with Article 33(2), which increased the limit from the 12nm originally provided for in Article 24(2) TSCZ 1958. Article 13 states that Iran may adopt:

measures necessary to prevent the infringement of laws and regulations in the contiguous zone, including security, customs, maritime, fiscal, immigration, sanitary and environmental laws and regulations and investigation and punishment of offenders.

The references to customs, fiscal, immigration, and sanitary laws, and punishment of offenders mirrors Article 33(1)(a) and (b) LOSC 1982. However, the references to security, maritime and environmental laws were added by Iran. There is no provision for delimitation of the contiguous zone in Iran's 1993 Act.

On 11 January 1994 the US issued a written protest against Iranian legislation, including Iran's 1993 Act and the Decree of 22 July 1973, in the light of the relevant provisions of LOSC 1982 which was due to come into force on 16 November 1994.<sup>369</sup> The US stated, *inter alia*, that as recognised in customary international law and as reflected in LOSC 1982, and except where provided otherwise in the Convention, the normal baseline for measuring the breadth of the territorial sea is the low water line along the coast as marked on large-scale charts officially recognised by the coastal state. It is only where the coastline is deeply indented and cut into or if there is a fringe of islands in the immediate vicinity of the coast that the state may choose to use straight baselines joining certain points.<sup>370</sup> The US observed that the Iranian coastline is rarely deeply indented or fringed by islands and that Iran has employed straight baselines along most of its coastline, and in the vicinity of most baseline segments the coastline is quite smooth. The US therefore concludes that the correct baseline for virtually all Iran's coast in the Persian Gulf and the Gulf of Oman is the normal baseline, namely the low water line. The US stated additionally that while LOSC 1982 does not set out a maximum length for a straight baseline segment, many

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<sup>369</sup> Protest printed in (1994) 25 *LOS* 101-103.

<sup>370</sup> See Article 7(1) LOSC 1982.

of those set out in the Iranian legislation are “excessively long”, noting that “11 of the 21 segments are between 30 and 120 miles long”. The US stated its belief that the maximum length of an approximately drawn straight baseline segment should not normally exceed 24nm. The US also protested that islands may not be used to define internal waters except where islands are part of a valid straight baseline system or part of a closing line for a juridical bay. Nevertheless, Article 3 of Iran’s Act 1993 contravenes this by, according to the US, having no basis in international law.

The US also protested against Iran’s provisions on the contiguous zone in Article 13 of Iran’s Act. It objected to the provision that Iran may adopt measures necessary to prevent infringement of security, maritime and environmental laws, stating that these exceed what is provided for by LOSC 1982.

Iran issued a written response to the US’s protest.<sup>371</sup> This stated that Iran does not consider all provisions of LOSC 1982 to constitute customary law. Iran refers to its Declaration at the time of signing the Convention on 10 December 1982 in which it stated that despite the Convention intended to be of general application and of law-making nature, certain provisions do not necessarily codify existing customary law. It is notable however that Iran has made no attempt in these two statements to identify which provisions are and which are not reflective of customary law.

In its response, Iran emphasised that as early as its Decree of 22 July 1973, usage of straight baselines was provided for, and that usage of straight baselines is in no way considered as an unusual measure as other states also use this method under similar circumstances.<sup>372</sup> Iran went on to state that since the enforcement of the Decree of 22 July 1973, and in spite of its international circulation via the United Nations, there have been no objections. Iran considered this to reflect “recognition of its content by the international community”. Iran goes on to agree with the US that international law does not set the maximum limit for the length of a straight baseline segment and therefore concludes that the reference by the US to a maximum of 24nm lacks a legal basis. Iran goes on to state that it has made an effort to employ criteria which have been important prior to LOSC 1982 and which are mentioned in it, and gives the example of firstly drawing straight baselines in such a way so that they do not depart in any appreciable extent from the general direction of the coast (Article

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<sup>371</sup> Response printed in (1994) 26 *LOS* 35-38.

<sup>372</sup> Although not specifically mentioned, this may be taken to include Saudi Arabia and Oman.



7(3) LOSC 1982), and secondly taking into account the economic interests pertaining to the region, the reality and importance of which are evidenced by long usage (Article 7(5) LOSC 1982).<sup>373</sup>

With regard to the US objection to Article 3 of Iran's 1993 Act, Iran cited its earlier Act on Territorial Waters and the Contiguous Zone of Iran, dated July 1934, as amended by the Act of 11 April 1959 which provided for similar rules. Iran stated that in the 1993 Act the criterion for the distance between islands had been changed to reflect the extension of the breadth of the territorial sea.<sup>374</sup>

In seeming response to the US objection to the provisions on the contiguous zone, Iran further highlighted the importance of environmental conditions in the Gulf, which as a semi-enclosed sea which was the scene of fishing and the oil industry, was vulnerable and required its marine environment to be protected.

The dispute between the US and Iran over Iran's straight baseline manifested itself in a concrete way in an incident which took place on 19 September 1999. Iran complained in a note verbale dated 30 November 1999 that on that date in September, a US warship entered Iran's territorial sea in the Gulf, in contravention of international law.<sup>375</sup> The US responded in a note verbale dated 6 April 2000.<sup>376</sup> It stated that US warships are deployed in the Gulf and the Gulf of Oman as part of the

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<sup>373</sup> In a later objection, the US referred to this statement by Iran by making the point that in determining straight baselines, Iran cannot consider "the economic interests peculiar to the region concerned" unless the geographical prerequisites in Article 7(1) LOSC 1982 are first satisfied. See note verbale of 6 April 2000 from the US Mission addressed to the U.N. Secretariat, at (2000) 43 *LOS* 107.

<sup>374</sup> It is of note that Germany, on behalf of the EU objected to Iran's 1993 legislation in similar terms to the US on the basis that it is not in accordance with LOSC 1982, for example Iran's claim to straight baselines "along practically the entire coastline, even where it is not deeply indented and cut into and there is no fringe of islands along the coast in its immediate vicinity"; that several of the straight baseline segments are "excessively long"; and that "islands may only be used in defining internal waters where they form part of a genuine system of straight baselines or where they constitute the line which delimits bay". See démarche 14 December 1994 by the German Embassy in Tehran, communicated by the Permanent Mission of Germany to the U.N. in a note verbale dated 11 September 1995. For démarche, see (1996) 30 *LOS* 60-1. Iran replied in terms similar to its reply to the US For Iran's reply to Germany see (1996) 31 *LOS* 37-8. It added more specifically that in relation to using straight baselines to connect islands less than 24nm apart, with the designation of waters separating them as internal waters, as provided for in Article 3 of the 1993 Act, "there is nothing in international law to prohibit the use of that method."

<sup>375</sup> Note verbale dated 30 November 1999 from the Interests Section of the Islamic Republic of Iran in Washington, D.C., addressed to the Embassy of Pakistan in Washington, D.C., at (2000) 43 *LOS*, 109. This note verbale was transmitted to the U.N. Secretary General, by way of letter dated 21 December 1999 from the Permanent Representative of Iran to the U.N., to be forwarded to the US Department of State, also at (2000) 43 *LOS* 109.

<sup>376</sup> Note verbale of 6 April 2000 from the US Mission addressed to the U.N. Secretariat, at (2000) 43 *LOS* 107.

Multinational Interception Force authorized under UN Security Council Resolution 665 (1990) concerning Iraq. In accordance with its mandate pursuant to Resolution 665, a US warship intercepted a Belize-flagged merchant vessel suspected of conducting prohibited trade with Iraq in violation of economic sanctions imposed by the Security Council. It confirmed that the US warship's position as described by Iran was in international waters approximately 5.6 miles outside of Iran's 12nm territorial sea as measured from the low-water lines, and the warship intercepted the merchant vessel approximately 3.5 miles outside Iran's territorial sea thus measured, and therefore the warship was in international waters. The US once more objected against Iran's straight baselines, stating that they were in breach of both customary international law and Article 7(1) LOSC 1982, and confirmed that at the position of the coast closest to where the warship intercepted the vessel, the appropriate baseline is the low-water line.

In 1996, Qatar in a note verbale to the U.N. set out a number of objections on the basis that parts of the Act contravened both customary law and LOSC 1982.<sup>377</sup> Qatar objected to the straight baselines claimed by Iran, and waters between islands not more than 24nm apart being considered as internal waters. It also objected to the provisions of the 1993 Act providing for measures to be taken in the contiguous zone to prevent the infringement of environmental and security regulations of Iran as provisions which "go well beyond what is permitted by international law."<sup>378</sup>

### **Observations on the legislation of Iran and the degree of its conformity with international law**

As early as 1934 Iran had established a 6nm territorial sea, and, showing the same innovation as Saudi Arabia, this was extended to 12nm in its 1959 Act. As set out above, delimitation of territorial sea in 1959 Act and 1993 Act is to be effected by the equidistance line which reflects TSCZ 1958 and LOSC 1982. It is interesting

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<sup>377</sup> Note verbale from Permanent Mission of Qatar to U.N., at (1996) 32 *LOS* 89-90.

<sup>378</sup> Iran replied in a similar way to its previous responses to the US and Germany. For its reply to Qatar, see (1997) 33 *LOS* 87-8.

that these Iranian provisions are different to the equivalent Saudi Arabian provisions, which, as we have seen, provided for delimitation of the territorial sea by means of the application of equitable principles.

As early as 1934 Iran had also legislated for a 12nm contiguous zone, in advance of TSCZ 1958 which provided for a maximum of 12nm for a contiguous zone. In further conformity with international law, the 1993 Act extended the contiguous zone to 24nm from the baseline, bringing its breadth in line with LOSC 1982. However, like Saudi Arabia, the purposes for which the contiguous zone is established by Iran in its 1993 Act goes far beyond those set out in LOSC 1982, and were subject to US objection as set out above. Like Saudi Arabia, Iran in its 1993 Act provides for a contiguous zone to take measures to prevent infringement of security and environmental law, which do not have a place in the international law provisions. Indeed Iran added another new element to the list, namely maritime matters, not referred to by Saudi Arabia.

While Iran reflects international law in its provision for the low-water mark as the standard baseline, like Saudi Arabia its provisions on straight baselines do not confirm with international law. The effect of Article 3, and the Decree of 22 July 1973, is that Iran has claimed straight baselines along its entire coastline along the north of the Gulf despite the fact that there are no major indentations along its coast and although there are some islands offshore, they do not form a fringe. As set out above, the US objected to the straight baselines claimed by Iran, as it did to the Saudi Arabian claims to straight baselines. A number of states have also protested on the basis that Iran's claims to straight baselines do not comply with international law as contained in Article 7 LOSC 1982.<sup>379</sup>

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<sup>379</sup> See *Limits in the Seas*, No. 114, "Iran's Maritime Claims" (The Geographer, Washington D.C., 1994).

## **Kuwait**

The legislative activity of Kuwait in this decade is explained by its obtaining of independence from Britain in 1961. In this regard, Kuwait first issued a Decree Regarding the Delimitation of the Breadth of the Territorial Sea of the State of Kuwait on 17 December 1967.<sup>380</sup> This legislation has explicit leanings towards the TSCZ 1958 which had come into force on 10 September 1964.

The Preamble explicitly notes, amongst other matters, TSCZ 1958. Article 1 extends the territorial sea for a distance of 12 miles from the baselines of the mainland and of Kuwaiti islands, bringing Kuwait into line with the other Gulf States referred to above.<sup>381</sup>

Article 2 deals with baselines from which the territorial sea is measured. Article 2(a) provides that where the shore of the mainland or an island is fully exposed to the open sea, the baseline is the low-water line, which is again in accordance with the general rule in TSCZ 1958. Article 2(b) defines straight baselines and states that in the case of a port or harbour, the outermost permanent harbour works which form an integral part of the harbour system are considered as forming part of the coast for the purpose of the baseline. This language is precisely in line with TSC 1958 and LOSC 1982 (although there is no exception, as stated in Article 11 LOSC 1982, that off-shore installations and artificial islands shall not be considered as permanent harbour works.)

Article 2(c) states that in the case of a low-tide elevation situated not more than 12 miles from the mainland or from a Kuwaiti island, the outer edge of that low-tide elevation constitutes the baseline for measuring the territorial sea of the mainland, or, as the case may be, of the island off which the elevation is located. This is similar to the provision contained in Article 11(1) TSCZ 1958 (which is repeated in Article 13(1) LOSC 1982) which states that where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for

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<sup>380</sup> Published in the *Official Gazette* No. 658 of 24 December 1967, p. 4 and reproduced in (1970) 15 U.N. Leg. Ser. 96.

<sup>381</sup> References are to miles rather than nautical miles in the translation of the Decree, but nautical miles may be presumed.

measuring the breadth of the territorial sea. The definitions of “island” and “low-tide elevation” contained in Article 3 of the Kuwaiti Decree are precisely the same as the definitions in Article 10(1) and 11(1) respectively of TSCZ 1958 (as repeated in LOSC 1982).

Article 2(d) of the Kuwaiti Decree provides that in the case of Kuwait Bay, the waters of which are stated to be internal waters, the baseline is the closing line across the entrance to the Bay. While this is in general in line with the TSCZ 1958, there is no detail on the maximum limit of the closing line, and neither is a bay defined, whether in line with the Conventions, or at all. There is no reference to a system of straight baselines, apart from the line drawn across the entrance to Kuwait Bay.

Article 4 of the Kuwaiti Decree states that where the territorial sea overlaps with that of another state or of the partitioned Zone, the boundary shall be determined in accordance with Article 12 TSCZ 1958, which, as we have seen refers to the equidistance line, in the absence of agreement.<sup>382</sup>

In Article 6 of the Decree, Kuwait reserves rights in the zone contiguous to its territorial sea.

Kuwait issued Decree No. (317) Concerning the Delimitation of the Marine Areas Pertaining to the State of Kuwait, as amended on 29 October 2014.<sup>383</sup> It is a comprehensive law dealing with a range of law of the sea issues. Its Preamble, amongst other matters, refers to its ratification of LOSC 1982. Article 8 makes clear that it supersedes the previous Decree of 17 December 1967, as well as any other provisions contrary to the new Decree.

Article 1 defines an “island” and a “low-tide elevation” in accordance with the definitions in Articles 121(1) and 13(1) LOSC 1982 respectively.

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<sup>382</sup> See Chapter 6 for the 1965 agreement between Saudi Arabia and Kuwait regarding partition of the Neutral Zone between them.

<sup>383</sup> Website of the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, U.N. Secretariat, at: [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/Kuwait\\_Legislation.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/Kuwait_Legislation.pdf) (accessed 8 July 2016). Article 5 was amended by Decree No. (141/2015) issued on 12 May 2015.

a. Baselines and the territorial sea

Article 2 sets out mechanisms for determining the baselines of Kuwait. Article 2(a) states that when the coast of the mainland or of a Kuwait island faces the open sea, the normal baseline shall be the low-water line, which is consistent with Article 5 LOSC 1982 which provides for the “normal baseline”. Article 2(b) of the 2014 Decree provides that where there is a port on the coast, the outermost seaward permanent harbour works are regarded as forming part of the coast. This reflects Article 11 LOSC 1982 although it does not refer to the latter’s caveat that off-shore installations and artificial islands are not considered as permanent harbour works. Article 2(c) provides that where there is a low-tide elevation not exceeding 12nm from the coast of the mainland or an island, the outer edge of it shall be the normal baseline. This is broadly in conformity with Article 13(1) LOSC 1982. Article 2(d) of the 2014 Decree states that the baseline of Kuwait Bay shall be the Bay’s closing line. Again there is a lack of detail on how the closing line is constructed, as was the case with Kuwait’s 1967 Decree dealing with the baseline of Kuwait Bay. Both the 1967 and 2014 Decrees do not provide for straight baselines other than in relation to the Bay.

b. Internal waters

Article 3 states that Kuwait’s internal waters are those on the landward side of the normal baseline, which is in accordance with 8(1) LOSC 1982.

c. The territorial sea

Article 4 confirms that Kuwait’s territorial sea is 12nm, measured from the normal baselines, as did Article 1 of the 1967 Decree. Article 4 of the also provides that delimitation of the territorial sea with an adjacent or opposite state, in the absence of agreement shall be by way of a median line. This reflects to an extent Article 15 LOSC 1982.

d. The contiguous zone

Article 5 claims a 12nm contiguous zone from the outer limits of the territorial sea, in which it shall exercise control to prevent infringement of customs, fiscal, immigration and sanitary law within its territory or territorial sea, and to punish infringements. The claim is confined to the purposes for which supervision in the zone may be undertaken as contained in Article 33(1) LOSC 1982. Delimitation of the contiguous zone with an opposite or adjacent state, in the absence of agreement, shall be by way of the median line. As noted in Chapter 2, such a provision is not provided for in LOSC 1982.

**Observations on the legislation of Kuwait and the degree of its conformity with international law**

It is quite clear that Kuwaiti legislation can be characterised as having a high level of conformity with international law. The 1967 Decree makes explicit references to TSCZ 1958. In that Decree, reiterated in the 2014 Decree, Kuwait claimed a 12nm territorial sea. The 1967 and 2014 Decrees both provide for delimitation of the territorial sea to be by way of the equidistance line, in the absence of agreement, which reflects the reference to the equidistance line in TSCZ 1958 and LOSC 1982.

The 2014 Decree claims a 12nm contiguous zone from the outer limits of the territorial sea, therefore bringing it in line with LOSC 1982. It is of note that the Kuwaiti claim to a contiguous zone, unlike Saudi and Iranian legislation is confined to the purposes set out in TSCZ 1958 and LOSC 1982.

Further conformity with international law is evidenced by the provision for the low water line as the normal baseline, and the definitions of “island” and “low-tide elevation” are the same as in TSCZ 1958 and LOSC 1982. While there is provision for a straight baseline in respect of Kuwait Bay, this is somewhat lacking in detail. In all the circumstances, the Kuwaiti legislation is highly compatible with international law.

## **United Arab Emirates**

The UAE, as a single entity, issued Federal Law No. 19 of 1993 on Determination of the off-shore territories of the United Arab Emirates.<sup>384</sup> This was intended to be a comprehensive treatment of these aspects of the law of the sea.

Article 1 sets out a number of definitions. An “island” is defined as “a natural formation of land surrounded by water and emerging above water at high tide” which is the essentially the same definition in Article 121(1) LOSC 1982 (and in TSCZ 1958), although it is interesting that the word “emerging” is used rather than “above water at high tide” in LOSC 1982 and which suggests a slight distinction. A “group of islands” is defined as “a formation of two or more islands constituting with their interconnecting waters an interrelated geographical and economic entity”. There is no such corresponding separate definition in LOSC 1982, although it is of interest that the UAE definition seems to have looked to Article 46(b) LOSC 1982 which defines “archipelago” as “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.” Plainly, the UAE is not an archipelagic state, but is seeking to benefit from the baseline provisions applicable to such states, and this is made clearer in the UAE’s Article 6(3) dealt with below.

The UAE’s definition of a “low-tide elevation” corresponds with the definition in Article 13(1) LOSC 1982 (and Art 11(1) TSCZ 1958). The UAE’s definition of a “bay” conforms with Article 10(2) LOSC 1982, although it does not contain the part of the definition in the latter which states that an indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation. Nor does it contain the further detailed provisions in Article 10 dealing with the measurements

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<sup>384</sup> Certified translation of the law published in the UAE Official Gazette, Vol. No. XXIII, Issue No. 257, dated 20 October 1993, p.7-17; See also version in (1994) 25 *LOS* 94-100.



of the bay or the drawing of straight baselines across the entrance of the bay, the maximum length of such closing line being 24nm, although some of these factors do appear in Article 6(2) of the 1993 Law, which is examined below. This definition, however, is more in conformity with international law than the Saudi and Omani legislation of the 1950s and 1970s respectively in defining a “bay”. The phrase “nautical mile” is defined as 1852 metres which conforms with international practice.

a. Internal Waters

Article 2 of the 1993 Law states generally that internal waters are those on the landward side of the baseline from which the breadth of the territorial sea of the State is measured. This is a generally accepted proposition and reflects the wording in Article 8(1) LOSC 1982, save that the latter also refers to the exceptions in Part IV, which deal with archipelagic baselines. Article 2 of the UAE Law goes on to state that internal waters specifically include the following areas of water:

1. The waters of bays located along the entire length of the coast;
2. The waters of any low-tide elevation lying at a distance not exceeding 12 nautical miles from the mainland or from any island belonging to the State;
3. The waters between the mainland of the State and any island belonging thereto whose distance from the mainland does not exceed 12 nautical miles;
4. The waters between the islands belonging to the State, the distance between each of which does not exceed 12 nautical miles.

The above provisions should also be seen in conjunction with Article 6 of the UAE Law which deals with the baselines from which the UAE’s territorial sea shall be measured (as to which see below).

With regard to Article 2(1), there is no reference to the length of the closing line which may be drawn to enclose internal waters within the bay, although this is referred to in Article 6(2). In respect of Article 2(2), the phrase “the waters of any low-tide elevation...” is not particularly clear, although Article 6(5) adds some further clarity, and both provisions should be read in conjunction. Article 2(3) does

not seem to contravene LOSC 1982 although there is no separate corresponding provision. Article 2(4) does not seem to have a clear basis in LOSC 1982.

b. Baselines and the territorial sea

Article 4 states that the UAE's sovereignty extends to the airspace above the territorial sea as well as its bed and subsoil. Article 4 further states that the UAE shall exercise its sovereignty over the territorial sea in accordance with the provisions of this Law and the rules of international law. This is consistent with Article 2 LOSC 1982. Article 4 is also consistent with Article 3 LOSC 1982 in that it states that the territorial sea of the UAE extends 12nm from the baseline.

Article 6 provides a number of ways that the baseline from which the territorial sea is to be measured. Article 6(1), consistent with the TSCZ 1958 and LOSC 1982 states that the low-water mark is the baseline where the coast is exposed to the open sea, thereby reflecting the general international rule. However, where the coastline is deeply indented or cut into, there is to be a method of straight baselines to be determined by the UAE's competent authorities. Clearly the requirement for the coastline to be "deeply indented or cut into" is reminiscent of Article 7(1) LOSC 1982, however, the placing of the final decision of how to draw the baselines in the hands of the UAE's authorities is a direct expression of state autonomy in the matter.

Article 6(2) reflects Art 10(4) LOSC 1982 on straight baselines being drawn across the entrance to bays, stating that such lines not exceeding 24nm are to be drawn between the low-water marks of the entrance of bays. Reflective of Art 10(5) LOSC 1982 is the further provision that if the width of the bay's entrance exceeds this distance, the line is to be drawn between any two low-water marks closest to the entrance (thus enclosing the maximum amount of water), provided that the distance between them does not exceed 24nm.

Article 6(3) states that where there is a group of islands, the territorial sea is to be measured from straight lines joining the outer points of the outermost islands forming the group. This provision for straight baselines is reminiscent of Oman's 1972 Decree Art 2(c). It does not have a corresponding provision in LOSC 1982,

apart from the reference to archipelagic baselines in Article 47(1) which states that an archipelagic state may draw straight baselines joining the “outermost points of the outermost islands...” as long as various requirements are met. Clearly the UAE is seeking to benefit from such a provision although geographically it does not fulfil the requirements to claim such baselines according to LOSC 1982.

Article 6(4) states that where there is a port or harbour, the territorial sea is to be measured from lines drawn adjacent to the seaward side of the outermost port or harbour installations and lines drawn between the outer points of such installations provided that such works are an integral part of the port or harbour system. This reflects Article 11 LOSC 1982 which states that for the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Article 11 adds a caveat, not reflected in the UAE’s provision, namely that off-shore installations and artificial islands shall not be considered as permanent harbour works.

Article 6(5) states that where a low-tide elevation is wholly or partly situated at a distance from the mainland or from any island not exceeding the width of the territorial sea, such low-tide elevation may be used as a baseline for measuring the breadth of the territorial sea. This is reminiscent of Article 2(c) of Oman’s 1972 Decree. It is also reflective of Article 13(1) LOSC 1982 which states that in the circumstances outlined in the UAE provision, the low-water line on that elevation may be used as the baseline.

Article 7 states that if the measurement of the territorial sea in accordance with this Law leaves an area of EEZ wholly surrounded by territorial sea and extending not more than 12nm in any direction, such an area shall form part of the territorial sea. Further, the same rule shall apply to any area of EEZ which may be enclosed by drawing a single straight line not more than 12nm long. There is no equivalent provision in LOSC 1982.

Article 8 states that the outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea. This mirrors Article 4 of LOSC 1982.

c. The contiguous zone

Article 10 of the 1993 Law states that the UAE shall, in a zone contiguous to its territorial sea, exercise supervision and control for the purposes of i) preventing infringement of its security, customs, fiscal, sanitary or immigration laws within its land territory, internal waters or territorial sea, and ii) punishing infringement of such laws if committed within the UAE's land territory, internal waters or territorial sea. As has been seen in Iran's 1993 Act, the UAE has added "security" to the list of purposes for which supervision in the contiguous zone may be undertaken in Article 33(1) LOSC 1982. Article 11 of the UAE Law states the breadth of the contiguous zone is 12nm measured from the outer limits of the territorial sea.

d. Delimitation of the territorial sea and contiguous zone

Article 19 states that the following provisions on delimitation apply to the delimitation of the maritime zones of islands belonging the UAE

Article 23(1) states that where the territorial sea of the UAE is opposite or adjacent to the territorial sea of another state, the outer limit of the UAE's territorial sea shall be the median line. This to an extent reflects Article 15 LOSC 1982 but does not mirror it.

Article 23(2) states that in the absence of agreement between the UAE and another adjacent or opposite state, the outer limit of the contiguous zone shall be the median line every point of which is equidistant from the nearest points on the baselines. LOSC 1982 does not specifically deal with delimitation of the contiguous zone, although Article 24(3) TSCZ 1958 provided for delimitation by the median line. It is generally accepted that this continues to be customary law.

Article 24 stipulates that the UAE shall publish official charts to show accurately the outer limits of the territorial sea and the contiguous zone. Article 25 makes clear that the 1993 Law shall not affect the validity of agreements previously concluded between the individual Emirates and the Emirates have the right to enter into agreements regarding maritime boundaries between themselves.

The Council of Ministers' Decision No. (5) 2009 in respect of the Application of the Straight Baselines System to a Part of the Coast of the United Arab Emirates was issued on 14 January 2009.<sup>385</sup> It lists a number of coordinates between which straight baselines are to be drawn on parts of the UAE's coast. The straight baselines thus established are to be used to delimitate the UAE's maritime zones in those parts. Many of the coordinates are islands near the coast. Saudi Arabia protested against this Decision in a note verbale dated 9 August 2009, despite Saudi Arabia's own extensive claims to straight baselines.<sup>386</sup> Saudi Arabia objected on the grounds that international law allows straight baselines:

only in special coastal conditions and only when certain criteria exist. One of these criteria is that the straight baselines do not deviate substantially from the general direction of the coastline.

It is obvious that a part of the straight baselines opposite the Saudi coast has no relation to the United Arab Emirates coast, and substantially deviate from the general direction of the coast of the United Arab Emirates.

The UAE replied stating that the system of straight baselines claimed in the Decision of Ministers No. 5 of 2009 "is consistent with the criteria established by international law."<sup>387</sup>

### **Sharjah**

A Decree concerning the Territorial Waters of Sharjah Emirate and its Dependencies and Islands of 10 September 1969 declared sovereign rights in a 12nm belt of territorial sea, applicable to Sharjah and the island of Abu Musa.<sup>388</sup> On 5 April 1970, another Supplementary Decree concerning the Territorial Sea of the Emirate of

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<sup>385</sup> (2009) 69 *LOS* 78

<sup>386</sup> Note verbale dated 9 August 2009 from the Ministry of Foreign Affairs of Saudi Arabia to the Ministry of Foreign Affairs of the UAE, at (2010) 71 *LOS* 47-8. Saudi Arabia also made clear that the UAE Decision did not affect in any way the bilateral Agreement between Saudi Arabia and the UAE signed on 21 August 1974. This agreement is referred to in Chapter 6.

<sup>387</sup> See note verbale dated 12 November 2009 from the Ministry of Foreign Affairs of the UAE to the Secretary-General of the U.N. at (2010) 71 *LOS* 50-51.

<sup>388</sup> Text in 37 *Petroleum Legislation, Basic Oil Laws and Concession Contracts (Middle East)*, pp. Sharjah A-O.

Sharjah and its Dependencies confirmed once more that the territorial sea extended to 12nm from the baselines on the coasts of the mainland and of the islands (Article 1).<sup>389</sup>

### **Observations on the legislation of the UAE and the degree of its conformity with international law**

As early as 1969 Sharjah claimed a 12nm territorial sea, and as such, was keeping abreast with the most recent developments on the international plane. The UAE's 1993 Law also claims a 12nm territorial sea. With regard to delimitation of the territorial sea, this is said to be by way of the equidistance line, thereby reflecting Article 15 LOSC 1982.

The 1993 Law also claims a 12nm contiguous zone from the outer limits of the territorial sea, as provided by LOSC 1982. However, it is of interest that like Saudi Arabia and Iran, the UAE goes beyond international law in adding "security" to the list of laws in respect of which the the contiguous zone is established to prevent infringement.

As set out above, the 1993 Act demonstrates a degree of conformity with international law, although it may be said that the Act features a significant number and range of contributions which do not have a place in international law. The basic definition of an "island" is broadly reflective of TSCZ 1958 and LOSC 1982, and the definition of a "low-tide elevation" corresponds with the definitions in these Conventions, and like the legislation of, for example Saudi Arabia and Kuwait, the definition of "bay" does not conform with the international law definition, having far less detail and specificity.

Like the legislation of other Gulf states discussed in this chapter, the UAE Law follows general international law in establishing the standard baseline as being the low-water mark. However, as with other Gulf states, provisions dealing with straight baselines go beyond international law. For example, like Oman's 1972 Decree, referred to below, the UAE provides for straight baselines joining the outer points of the outermost islands in a group.

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<sup>389</sup> *Ibid.*, pp. Sharjah B-O.

## Oman

The Royal Decree of 17 July 1972 concerning the Territorial Sea, Continental Shelf and Exclusive Fishing Zones of the Sultanate of Oman established a number of important and wide-ranging aspects of law of the sea.<sup>390</sup> This Decree was the first legislation emanating from Oman dealing with the issue of the limit of the territorial sea. In accordance with Article 2(2) 1982 LOSC, Article 1 of the 1972 Decree confirms that Oman (as other Gulf States have confirmed in their own legislative provisions) has sovereignty over the airspace above and the seabed and subsoil below the territorial sea. Article 2 of the 1972 Decree establishes that Oman's territorial sea extends 12 nm, and is to be measured from a number of baselines.

Article 2(a) begins in accordance with the TSCZ 1958 and LOSC 1982 with the reference to the general rule regarding the low water line of the mainland constituting the baseline. However, its remainder differs from the Convention provisions where it states that the baseline may be that of the low-water line of an island, rock, reef, or shoal more than 12nm distant from the mainland or another island, rock, reef, or shoal, where the coast faces open sea. There is no definition provided of these features, unlike the Saudi Decree of 1958 which did provide definitions of an "island" and a "shoal". Reefs are not dealt with in TSCZ 1958. Although Article 6 LOSC 1982 refers to the low water line of reefs as constituting the baseline, such a situation specifically applies in the case of islands situated on atolls or islands having fringing reefs. There is no such specificity in Oman's Article 2(a). Further, there is no provision in the Conventions for a wholly submerged rock, reef or shoal (if these are what Oman refers to) to be used to establish a baseline. The words "rock", "reef" and "shoal" could refer to wholly submerged features, or may equally relate only to low-tide elevations as defined in the Conventions. Article 13(1) LOSC 1982 states that the low-water line on low-tide elevations may constitute the baseline, where they are wholly or partly at a distance not exceeding the breadth of the territorial sea (12nm) from the mainland or an island. The limitation imposed on

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<sup>390</sup> For the text see (1974) 16 U.N. Leg. Ser. 23. The Decree is also printed in *Limits in the Seas*, No. 61, 'Straight Baselines: Oman (Hypothetical)', International Boundary Study Series A (the Office of the Geographer, US, June 4, 1975), pp. 1-4.

distance is specifically not matched by Oman. It is further to be observed that the references to islands, rocks, reefs and shoals are lacking in any kind of definition in the Decree, and thus the lack of any attempt to bring their definition in line with the TSCZ 1958 (or LOSC 1982) means that the latter's specified requirements for baselines in relation to such features, whether normal or straight, are not reflected by Oman.

The following provisions of Oman's Decree deal with straight baselines. Article 2(b) does reflect the Conventions to the extent that straight baselines not exceeding 24nm are drawn so as to join the low water marks of the entrance to bays, as stated in Article 10(4), (5) LOSC 1982. However, Oman has not defined the term "bay" or "gulf", and the latter is not a term of art in the Conventions.

Article 2(c) and (d) are much wider in their import than the provisions on straight baselines in the Conventions. Article 2(c) provides for straight lines connecting the nearest point on the mainland with the outer-most extremities of an island, rock, reef, or shoal, or group of such islands, rocks, reefs, or shoals, less than 12nm distant from each other, if any part of such island, rock, reef or shoal or group of islands, rocks, reefs, or shoals lies within 12nm from the mainland.

Further, Article 2(d) provides for straight lines connecting the outer-most extremities of islands, rocks, reefs, or shoals, more than 12nm distant from the mainland, but less than 12nm distant from each other. As such, there is no requirement for a fringe of islands along the coast in its immediate vicinity as stated in the Conventions. Even a single island, rock, reef or shoal is sufficient. As seen already in relation to Saudi Arabia's 1958 Decree, there is no provision in any of the Conventions for shoals to be used as points of the baselines, whether normal or straight. Even if a "shoal" could be said to be comparable in part to a low-tide elevation in the sense of the Conventions, there is no requirement in Oman's Decree as set out in the Conventions, that a straight baseline drawn to and from a low-tide elevation is only permissible where lighthouses or similar installations which are permanently above sea level have been built on them or where the drawing of baselines to and from such elevations has received general international recognition.

In 1975, the US Office of the Geographer found that on the basis of a hypothetical application of Oman's Decree, a number of areas of Oman would qualify for the drawing of a straight baseline system according to the criteria established therein, including the Musandam peninsula, an area of bays, indentations,



and small islands, which is located in the Gulf.<sup>391</sup> In a map published by that organisation, sixteen hypothetical straight baseline segments were suggested. The longest segment from Ra's Shaykh Mas'ud to Jazirat al Ghanam would be approximately 11.1nm while the shortest, from Great Quoin island to Gap island would be 1.25nm. The total length of the hypothetical system was 75.6nm with an average segment of approximately 4.73nm in length.<sup>392</sup> The importance of this issue for the US and also internationally, was due to the fact that such a creation of a baseline system would enclose within Oman's internal waters the principal navigation channel of the Strait of Hormuz, lying between the Musandam Peninsula and the line connecting Great Quoin-Gap- Little Quoin islands.<sup>393</sup> It was concluded that on consideration of the physical conditions of the coast of Oman probably no extensive straight baseline system could be developed according to the principles of international law.<sup>394</sup>

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<sup>391</sup> *Limits in the Seas*, No. 61, 'Straight Baselines: Oman (Hypothetical)' (International Boundary Study Series, published by Office of the Geographer, US, June 4, 1975), p.6ff. It is stated at p. 5 that six areas could qualify, according to Oman's legislation, for straight baseline systems as follows: i) the Musandam Peninsula area; ii) the Daymaniyat islands west of Muscat; iii) Fahal island and the adjacent area offshore from Muscat; iv) Al Masirah island in the Arabian sea; v) the Kuria Muria islands also in the Arabian sea; vi) a small group of islands along the coast of Oman near the Yemen (Aden) boundary (not charted on the map attached to the publication). Only the Musandam Peninsula is situated in the Gulf.

<sup>392</sup> *Ibid*, p. 6.

<sup>393</sup> *Ibid*, p. 6.

<sup>394</sup> *Ibid*, p. 8.

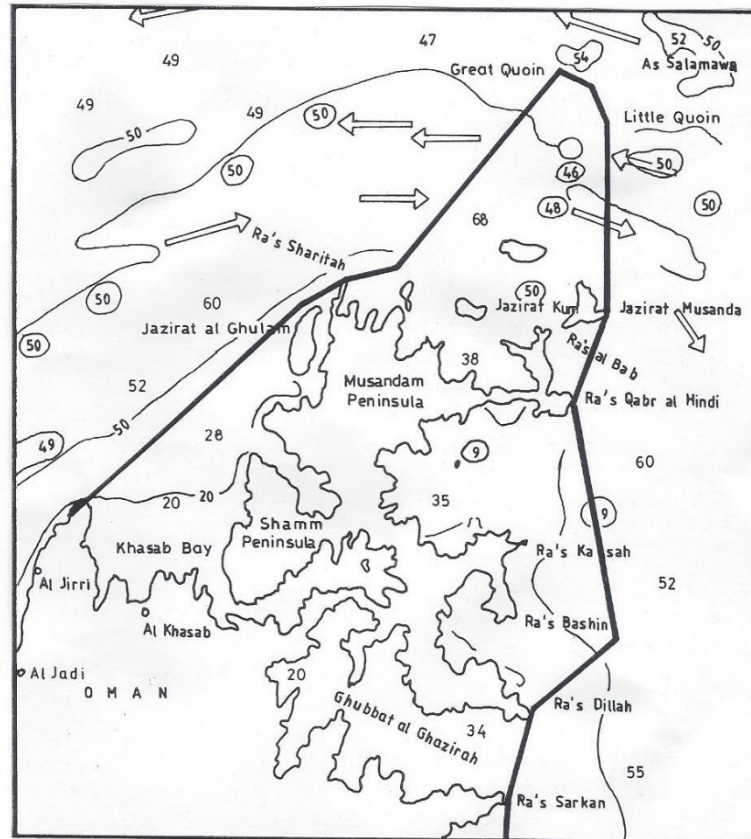


Figure 10: Hypothetical application of Oman's 1972 Decree to the Musandam Peninsula, from Jaywardene, H.W., *The Regime of Islands in International Law* (Martinus Nijhoff, Dordrecht; London, 1990), p. 66, reflecting map in *Limits in the Seas*, No. 61, 'Straight Baselines: Oman (Hypothetical)' (International Boundary Study Series, published by Office of the Geographer, US, June 4, 1975).

Article 7 of the 1972 Decree deals with the situation where the territorial sea, continental shelf, and EFZ of Oman overlaps with those of another state with either an opposite or adjacent coast. It is stated that boundary of those maritime zones of Oman shall be the median line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of Oman and the territorial sea of other states is measured. With respect to the delimitation of the territorial sea, this provision partly reflects Article 12 TSCZ 1958 which itself is contained in Article 15 LOSC 1982. However, Oman's provision does not refer to

delimitation by way of agreement, or the derogation from equidistance where historic title or other special circumstances make it necessary.

Oman issued a Royal Decree concerning the Territorial Sea, Continental Shelf and Exclusive Economic Zone dated 10 February 1981.<sup>395</sup> Pursuant to Article 10 of the 1981 Decree, the provisions of the Decree of 17 July 1972 and the Royal Decree No. 44/77 of 15 June 1977 and all other provisions which contravene the provisions of the 1981 Decree are cancelled.<sup>396</sup>

Article 2 reiterates that the territorial sea extends 12nm. Article 2(a) goes on to state that the outer limit of the territorial sea is the line every point of which is at a distance of 12nm from the nearest point of the baseline. Thus Articles 3 and 4 of LOSC 1982 are closely reflected.

Article 2(b) states that except as otherwise provided, the normal baseline for measuring the breadth of the territorial sea is the low water line along the coast of the mainland or of islands or rocks. This does not reflect Article 3 TSCZ 1958 which stated, as has been seen, that the general rule that the baseline for measuring the territorial sea is the low water line along the coast. Article 2(c) refers to Oman's intention to issue a directive which will set out a system of straight baselines for the coast and also relating to the closed waters lying within gulfs and bays or in between islands and the mainland coast so that any line described therein is to be regarded as the baseline.

Article 8 states that in relation to another opposite or adjacent state, the outer limits of the territorial sea (as well as the EEZ and continental shelf) of Oman shall be the median line so that every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of Oman and the territorial sea of other such states is measured.

On 1 June 1982 Oman issued a Notice relating to the application of the straight baselines system for the demarcation of baselines for the territorial sea, the internal waters and the enclosed waters.<sup>397</sup>

Pursuant to Article 2(c) of the Royal Decree of 1981 referred to above, Article 1 of this Notice sets out the co-ordinates of latitudes and longitudes in order to

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<sup>395</sup> (1983) 1 *LOS*, pp. 33-34.

<sup>396</sup> Oman's 1977 Decree is discussed in Chapter 5 of this thesis.

<sup>397</sup> (1983)1 *LOS*, 35.

determine the positions of points for drawing straight baselines. Article 1 also states that the co-ordinates referred to shall also be the basis for demarking the internal and enclosed waters. The co-ordinates are set out in Groups A to D. Oman has thus claimed straight baselines around the Musandam Peninsula (Group A).<sup>398</sup> The system claimed by Oman is very similar indeed to that suggested by the US Office of the Geographer as a hypothetical application of Oman's 1972 Decree as highlighted above. The straight baselines seem to constitute only 14 segments but the start and finish points are the same as in the hypothetical map, namely from Ra's Shaykh Mas'ud to Ra's Haffah. The longest segment, from Ra's Shaykh Mas'ud to Jazirat al Ghanam is the same in both.

In a note dated 4 February 1983, Iran issued a Note to the United Nations relating to Oman's notification of 1 June 1982, attached to Note No. MO/262/82, 31 August 1982.<sup>399</sup> Iran's note stated that it viewed Oman's notification as a unilateral extension of Oman's internal waters and territorial sea. As stated above, the US's concern, that Oman would enclose as internal waters areas which had not previously been internal waters, was matched by Iran in its Note of 4 February 1983. Iran's concern related to the right of innocent passage for its ships through Oman's internal waters, and invoking international law in general, and citing Articles 4 and 5 TSCZ 1958 and Article 8 LOSC 1982 in particular, presumed that this claim by Oman did not alter the right of passage of ships of other states. Article 8(2) LOSC 1982 states that where the establishment of a straight baseline in accordance with Article 7 results in enclosing as internal waters areas which had not previously been established as such, a right of innocent passage as provided in the Convention shall exist in those waters.

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<sup>398</sup> *Limits in the Seas*, No.113, "Djibouti-Oman: Straight Baseline Claims" (The Geographer, Washington D.C., 1992).

<sup>399</sup> (1983) 1 *LOS* 38.

## **Observations on the legislation of Oman and the degree of its conformity with international law**

As early as 1972, and again in its 1982 Decree Oman claimed a 12nm territorial sea and it is of note that delimitation of the territorial sea shall be by the equidistance line, partly reflecting Article 12 TSCZ 1958 and LOSC 1982. However, as set out above, Oman's 1972 Decree differs considerably from Convention provisions in additionally establishing baselines of maritime features of islands, rocks reefs and shoals more than 12nm from the mainland or from another island rock reef or shoal. Nor is there any attempt to define an island, and it is not clear what "rocks", "reefs" and "shoals" are.

Like other Gulf states Oman establishes the low water line as the standard baseline in 1972, however, in the 1981 Decree an addition was made to this so that the normal baseline was stated to be the lower water line not only of the mainland or islands but also rocks (which are undefined). Further, once more, as seen above in relation to the legislation of Saudi Arabia and Iran, Oman's provisions for straight baselines in the 1972 Decree were subject to heavy criticism by the US on the basis that they do not meet the requirements of international law. The US contention that they do not conform with international law is clearly well-founded.

## **Bahrain, Qatar and Iraq**

### **i. Bahrain**

Bahrain issued Decree No. 8 of 1993 with respect to the territorial sea and contiguous zone of the State of Bahrain on 20 April 1993.<sup>400</sup> The Preamble states that Bahrain exercises sovereignty over the territorial sea, and sovereign rights, control and jurisdiction over the seas and the continental shelf adjacent to its shores "in accordance with the rules of international law and within the limits prescribed by that law".

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<sup>400</sup> (1993) 24 *LOS* 5. It is worth noting that although Bahrain is a State constituted by islands, it is does not claim archipelagic status pursuant to Part IV LOSC 1982, and therefore does not claim archipelagic baselines

Further, in the Preamble Bahrain recognises that the LOSC 1982 “represents a statement of the rules of contemporary international law which accords with the views of the States generally in relation to the matters dealt with in the provisions of this Law”.

Article 1 states that the territorial sea is 12nm measured from baselines drawn in accordance with LOSC 1982. Article 2 states that the contiguous zone shall be 24nm, and is also to be measured from the same baselines as referred to in Article 1, also in accordance with LOSC 1982.

## **ii. Qatar**

Qatar issued Decree No.40 of 1992 defining the Breadth of the Territorial Sea and Contiguous Zone of the State of Qatar, dated 16 April 1992.<sup>401</sup> This followed Qatar’s signing of LOSC 1982 on 27 November 1984, and indeed that Treaty, as well as CSC 1958, is referred to in the Preamble of this Decree. Qatar ratified LOSC 1982 on 9 December 2002.

Article 1 states that the breadth of Qatar’s territorial sea is 12nm measured from the baselines “determined in accordance with the rules of international law”.<sup>402</sup> Qatar states that it exercises “sovereignty over its territorial sea, the airspace, seabed and subsoil thereof in accordance with international law...” Article 3 confirms that Qatar has a contiguous zone with a breadth of 12nm measured from the outer limit of the territorial sea, over which the state exercises “all rights and powers provided for under international law”. There is no provision for delimitation of the territorial sea or contiguous zone between Qatar and other states.

Thus in 1992, Qatar was legislating in accordance with international law with respect to the limits of the territorial sea and contiguous zone and the powers exercised within those zones.

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<sup>401</sup> (1993) 23 *LOS* 22.

<sup>402</sup> *Ibid.*, pp. 22-23.

### iii. Iraq

A note dated 2 February 1956 was issued by the Ministry of Foreign Affairs of Iraq, stating that no legislation existed at that current time dealing with the regime of the territorial sea. It further went on to state that it was the normal practice to apply in this respect “the general rules recognised by public international law”.<sup>403</sup> Thus Iraq stated its desire to achieve consistency with the international law of the sea.

Iraq issued a Republican Ordinance No. 435 on 15 November 1958.<sup>404</sup> In Article 2, Iraq confirmed that its territorial sea extends 12nm, measured from the low-water line of the Iraqi coast. This brought Iraq in line with Saudi Arabia.

Article 3 further states that where Iraq’s territorial sea overlaps with that of another state, the boundaries shall be determined by agreement with the other state in accordance with the “recognised rules of international law” or with such understanding as may be reached between the states.<sup>405</sup> Clearly this is a broad provision, but intended to operate in accordance with either international law, or agreement, with agreement or the genuine attempt to reach one having a long-standing and historical place in the customary law of delimitation.<sup>406</sup> Agreement as a means of delimitation is also referred to Article 12 TSCZ 1958 dealing with delimitation where the territorial sea of two states overlap.<sup>407</sup>

Articles 2 and 3 were repeated in Law No. 71 of 1958.<sup>408</sup> However, in the latter, there was an addition in Article 2 to the effect that the 12nm territorial sea was to be measured from the low-water mark “following the sinuosities” of the Iraqi coast. This makes clear that straight baselines are not being claimed.

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<sup>403</sup> (1957) 6 U.N. Leg. Ser. 26.

<sup>404</sup> Published in the *Official Gazette* No. 74 of 15 November 1958, and reproduced in (1970) 15 U.N. Leg. Ser. 89.

<sup>405</sup> (1970) 15 U.N. Leg. Ser. 89.

<sup>406</sup> For example, as made clear in the *North Sea Continental Shelf* cases (1969), albeit in the context of delimitation of the continental shelf.

<sup>407</sup> Article 15 LOSC 1982 on delimitation of the territorial sea also repeats the provision for agreement.

<sup>408</sup> Published in the *Official Gazette* No. 82 of 25 November 1968, and reproduced in (1970) 15 U.N. Leg. Ser. 90.

Iraq issued national legislation on 16 March 2011 to confirm straight baselines which it claimed.<sup>409</sup> There is a list of geographical coordinates with a map attached.

### **Observations on the legislation of Bahrain, Qatar and Iraq and the degree of their conformity with international law**

In the brief legislation of 1993, which is somewhat limited in the rights and jurisdiction which it sets out, Bahrain clearly intended and explicitly states that, as far as this legislation goes, this is to be “in accordance with” and “within the limits prescribed” by “the rules of international law”. Further, LOSC 1982 is invoked in the Preamble which Bahrain ratified on 30 May 1985. It could not be more clear that Bahrain explicitly allied itself with international law. It is therefore no surprise that Bahrain claims a 12nm territorial sea and 24nm contiguous zone in accordance with LOSC 1982. Similarly, Qatar also explicitly invokes international law, referring to CSC 1958 and LOSC 1982 in the Preamble of its 1992 Decree, and also claiming a 12 territorial sea and 12nm contiguous zone, both consistent with LOSC 1982. In addition, Iraq also claims a 12nm territorial sea, with the standard baseline being the low-water line in the usual way. Iraq’s legislation is permeated with references to its explicit affirmation that it recognises the general rules of international law.

### **Observations on the claims to straight baselines in the region**

As has been highlighted above, Iran, Saudi Arabia, the UAE, Oman and Iraq have all claimed systems of straight baselines. The US objections to those of Iran, Saudi Arabia and Oman are justified on the basis that such claims are not on accordance with international law, and it is clear when examining the reasoning that such objections are justified. However, of further interest is that some of the Gulf States have objected to each other’s excessive straight baselines as contravening international law, even though they themselves have dubiously claimed them. As has

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<sup>409</sup> (2012) 77 *LOS* 15. Transmitted through a letter to the U.N. dated 16 March 2011. Deposited with the Secretary-General of the U.N. under Article 16(2) of the LOSC 1982.



been seen, Oman's baselines have been objected to by Iran; Iran's have been objected to by Qatar; Saudi Arabia's have been objected to by the UAE and Iran; and the UAE's have been objected to by Saudi Arabia.<sup>410</sup> As such, while it may be said that a number of Gulf States have claimed straight baselines in a way which exceeds international law, it cannot be said that there is a clear recognition by any of the Gulf states that the claims are in accordance with law. As such there is little ground to argue that there is a regional customary international law governing claims to straight baselines.<sup>411</sup> Further, as will also be seen in Chapter 6 of this thesis, the claims to straight baselines, disputed as between Gulf States, has not affected the delimitation agreements entered into by them, as straight baselines were not relied on in the agreements.<sup>412</sup> Again, this supports the view that claims to straight baselines by some Gulf States are not accepted by others both within and outside the Gulf area, and that there is no consistent state practice that could be said to give rise to a local custom.

### **General concluding remarks on the degree of conformity of the Gulf states with international law of the sea**

The 1950s saw the finalisation of the TSCZ 1958 and CSC 1958. None of the Gulf States were parties to these conventions, although Saudi Arabia, Iraq and Iran did attend the Geneva Conferences. In 1971, the remaining Gulf States ended their protectorate relationship with Britain which had involved a control over their legislation and foreign policy. UNCLOS III began in 1973 at which the Gulf States participated, with eventually all ratifying LOSC 1982 with the exception of Iran and UAE, although they both signed it.

A particularly contentious aspect of Gulf State practice referred to above is the extensive straight baselines claimed by the Gulf States with the longest coastlines,

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<sup>410</sup> Saudi Arabia's objections to the UAE's are bound up with a dispute between both States as to the effect of the 1974 bilateral agreement between them. For further discussion of this agreement see Chapter 6 of this thesis.

<sup>411</sup> For a brief discussion of customary international law and regional customary international law, see Chapter 2 of this thesis.

<sup>412</sup> See for example the Saudi Arabia-Iran 1968 agreement dealt with in Chapter 6.

namely Saudi Arabia, Iran, the UAE and Oman. It is in this area that can be seen the most obvious departure from international law.

Saudi Arabia and Iran, which were unique in the Gulf as the only two Gulf states whose foreign policy was not controlled by the British were the first to legislate in the area of baselines, the territorial sea and the contiguous zone. Indeed it may also be said that they were innovative and proactive in the way they were aware of international law developments and clearly were influenced by each other. Therefore, for example, Saudi Arabia's 1949 Decree which provided for a 6nm territorial sea. Clearly this followed Iran's 1934 Act which legislated for a territorial sea of the same breadth. It is clear that the Saudi Arabia, Iran and Iraq were ahead of other states in the international arena in claiming a 12nm territorial sea.<sup>413</sup>

Obvious examples of conformity with international law are the laws of Kuwait, Bahrain, Qatar and Iraq which explicitly refer in their legislation to TCSZ 1958, LOSC 1982 and international law as sources of law governing their maritime claims. As seen above, all the Gulf States claim a 12nm territorial sea, with most doing so many years before LOSC 1982 came into existence. Those Gulf States which provide for delimitation of their territorial sea all do so by way of the equidistance line apart from Saudi Arabia which refers to equitable principles, and Iraq which provides for delimitation according to the rules international law or agreement.

Most of the Gulf States also claim a contiguous zone, the breadth of which is said to be 12nm from the outer limit of the territorial sea or 24nm from the baselines, thereby conforming with LOSC 1982. However, as observed above a particularly unusual aspect of the legislation of Saudi Arabia, Iran and the UAE is that they claim a contiguous zone for purposes going outside those provided by international law, including for matters relating to security, navigation and environmental matters.

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<sup>413</sup> In the arbitral award of *Petroleum Development Ltd. v The Sheikh of Abu Dhabi* (1951) 18 ILR 144, at 151, Lord Asquith found that Abu Dhabi's territorial sea was 3 miles in breadth. This was in accordance with British foreign policy at the time. The decision was in relation to the 1939 oil concession agreement, and it is unlikely that this was binding in any way other than for the purpose of the concession. Moving forward from the 1950s, and writing in 1977, Alexander states that by the beginning of 1976, 29 states claimed a 3 mile territorial sea, 18 states claimed between 3 and 12 miles, 56 states claimed 12 miles, 11 claimed between 12 and 200 miles, and 9 claimed 200 miles. See Alexander L.M., 'Regional Arrangements in the Oceans', (1977) 71 *AJIL* 84 at p. 85.

On the basis of the examination carried out in this chapter, it may be concluded that in general Gulf States are in conformity in many respects with international law in this area. The question of whether this conformity extends to legislation governing the the continental shelf and EEZs of the Gulf States and their delimitation is the subject of the next chapter.

## **Chapter 5**

### **Law of the Sea in the Gulf:**

#### **National Legislation on the Continental Shelf and the EEZ (the 1940s to the present)**

##### **Introduction**

A main force propelling delimitation in the Gulf has been, and continues to be, the desire to explore and exploit oil and gas resources in the seabed and subsoil. This economic motivation has necessarily sought the definition of areas in which such activities took place, so as to provide certainty for the actors involved in the process of exploitation of such natural resources.<sup>414</sup> The Truman Proclamation on the Continental Shelf in 1945 resulted in subsequent national legislation promulgated by the Gulf States regarding their rights in the seabed and subsoil.

The Gulf is characterised by a number of offshore islands of varying sizes and of varying distances from the coasts of states. There are many continuing territorial disputes concerning them, which have delayed or prevented agreements over maritime delimitation taking place.<sup>415</sup> Some bilateral agreements have resolved some of these disputes. The manner in which islands have been taken into account, if at all, when boundary lines have been agreed is therefore of importance.

The Gulf Sea is relatively shallow, having an average depth of less than 40 metres.<sup>416</sup> Due to its surface area, Gulf States can claim neither an entire 200nm EEZ nor a continental shelf to a distance of 200nm in the Gulf. The Gulf Sea is generally

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<sup>414</sup> Fisheries are another resource which are of importance in the region, although they have not motivated delimitation in the same way as the desire to explore mineral resources, and are not dealt with in this thesis.

<sup>415</sup> One such example of a territorial dispute is that between Sharjah and Iran over Abu Musa Island which has prevented a continental shelf boundary being agreed between them.

<sup>416</sup> C.G. MacDonald *Iran, Saudi Arabia and the Law of the Sea* (London, Greenwood Press, 1980), p. 25.

not more than 100 metres deep, with the deeper waters existing at its entrance, along the Iranian coast, and in certain pockets in the south along the Arab coast. It is characterised by islands and reefs which have an impact upon delimitation issues as will be seen in due course. One significance of the shallowness of the Gulf is that it has in the past given rise to lengthy discussion of the question of whether or not a continental shelf exists in the Gulf in both the geological and legal sense. Because of its shallowness it is often said to have either no continental shelf at all or the Gulf as a whole is said to constitute an extended continental shelf. There has been some debate among commentators with regard to this issue.<sup>417</sup>

As outlined earlier, Article 1 CSC 1958 refers to the continental shelf as the seabed and subsoil of submarine areas adjacent to the coast but outside the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of those areas. As has been seen already, a legal continental shelf is presently defined in Article 76 LOSC 1982 as extending either from beyond the territorial sea to the outer edge of the continental margin (of which the geological shelf is only a part), or to a distance of 200nm from the baselines. Again, the distance criterion of 200nm does not depend on the existence of an actual continental shelf in a geological sense. It is therefore suggested, that in relation to the provisions in both Conventions, it is irrelevant whether or not an actual continental shelf exists in the Gulf, and the applicability of the provisions is therefore not affected by its absence.

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<sup>417</sup> As stated by R. Young, in "Saudi Arabian Offshore Legislation", (1949) 43 AJIL 530 at 531: '...as a factual matter, no continental shelf exists in the Persian Gulf, which is merely a basin much less than 100 fathoms on the Asian continental mass'. Young changed his mind in time, writing that the Gulf as a whole was clearly a continental shelf in the legal sense, in "Equitable solutions for offshore boundaries: the 1968 Saudi Arabia-Iran agreement", (1970) 64 AJIL 152. See also H. Lauterpacht, "Sovereignty over Submarine Areas", (1950) 27 BYIL 376 at 384, where he states that the fact that in the Persian Gulf there is no rapid drop or a depth of 600 feet, so that the geographical concept of the continental shelf does not seem applicable, and this explains why there is no reference to the continental shelf in the Proclamation issued by the Gulf States. Other examples of similar views are those expressed by H.M. Al-Baharna, *The Arabian Gulf States* (2<sup>nd</sup> ed, Beirut, 1975), p. 279; J.Y. Brinton, "Jurisdiction over Seabed Resources and Recent Developments in the Persian Gulf Area", (1949) 5 REDI 131 at 137. See also G. Blake, *Maritime Aspects of Arabian Geopolitics* (Arab Research Centre, Research Paper Series, Arab Papers, No.11, September 1982), p. 4 who opines that on the basis that "[p]hysically it is akin to an inland sea occupying a large depression, so it is not strictly continental shelf, but its shallow waters gives it this status according to international law".

## **Saudi Arabia**

A Royal Proclamation of 28 May 1949, issued in the wake of the Truman Proclamation of 1945 declared that the *subsoil and seabed* of the areas contiguous to the Saudi Arabian coast was declared to appertain to Saudi Arabia and subject to its jurisdiction and control.<sup>418</sup> Although this went beyond the Truman Proclamation in that it declared Saudi Arabian jurisdiction and control over the seabed and subsoil instead of just over the natural resources contained within them, as has already been observed in Chapter 2, Lord Asquith in *Petroleum Development Ltd v Sheikh of Abu Dhabi* (1951) 18 ILR 144 found that the Gulf Proclamations broadly conformed with the Truman Proclamation.<sup>419</sup>

It was further stated in the Saudi Proclamation that the boundaries of such areas with other states would be determined in accordance with equitable principles by agreement with the other state or states, which was reflective of customary international law at the time. This reference to delimitation on the basis of equitable principles reflected the reference to them in the Truman Proclamation on the continental shelf of 1945.

It is notable that, unlike Iran's Bill of 1949, which is referred to below, there is no mention of the "continental shelf" as a concept specifically, only a reference to the seabed and subsoil, because of uncertainty at the time as to whether it in fact could be said that there was a continental shelf in existence due to the fact that the Gulf is so shallow, and geologically, a continental shelf does not appear to exist in the physical sense.<sup>420</sup>

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<sup>418</sup> Royal Pronouncement concerning the Policy of the Kingdom of Saudi Arabia with respect to the Subsoil and Sea Bed of Areas in the Persian Gulf contiguous to the Coasts of the Kingdom of Saudi Arabia, 28 May 1949, (1951) 1 U.N. Leg. Ser. 22.

<sup>419</sup> A similar view is expressed by R. Young, "The Legal Status of Submarine Areas Beneath the High Seas", (1951) 45 *AJIL* 225 at 228 who states that "[i]nsofar as the claims apply to submarine areas, it would seem unprofitable to speculate on possible shades of meaning in the various phrases used. All have in common a minimum intent to control exclusively the resources of certain areas of sea bed and subsoil; and as a practical matter it would seem impossible to control these resources in situ without controlling the sea bed and subsoil which contain them."

<sup>420</sup> MacDonald relates that in a private interview with Richard Young on 23 April 1976, an American who had been advising the Saudi Government on its maritime claims at the time of the 1949 Proclamation, Mr Young confirmed the term "continental shelf" was not used in the Proclamation because there was physically no "edge" in the continental shelf in the Gulf. See C.G. MacDonald, *Iran, Saudi Arabia and the Law of the Sea* (London, Greenwood Press, 1980), p. 155, n. 37.

A Declaration concerning the Limits of the Exclusive Fishing Zones of Saudi Arabia in the Red Sea and the Arabian Gulf was issued in 1974.<sup>421</sup> The Preamble of the Declaration affirms the provisions of Article 9 concerning fishing in the Saudi Decree No. 33 of 16 February 1958.<sup>422</sup> Article 1 states that the EFZs of the Kingdom are those areas contiguous to the coasts of the mainland and islands. It goes on to state that if the EFZs, measured from the baselines referred to in Article 5 of Decree No. 33 of 1958, overlap with those of another state, the boundary shall be the median line every point of which is equidistant from the baselines from which the territorial sea is measured. This does not reflect Article 74 of LOSC 1984 which refers to delimitation of the EEZ which shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

As seen in Chapter 4, Saudi Arabia's most recent legislative activity is in the form of the Statute of Maritime Delimitation of the Kingdom of Saudi Arabia of 13 December 2012.<sup>423</sup> Article 12 states that the EEZ extends to the maritime borders with adjacent and opposite states. No outer limit is set. Article 13 sets out the Kingdom's rights in the EEZ. Firstly, it has exclusive sovereign rights for the purpose of exploring natural resources, whether living or non-living, of the waters superjacent to the seabed and its subsoil, to conserve and manage such resources, and in relation to other activities for economic exploration and exploitation of the zone, such as the production of energy from water, currents and wind. Secondly, there is exclusive sovereignty over a) the protection and preservation of the marine environment, b) marine scientific research, c) the establishment and use of artificial islands, installations and structures and a safety zone around them, and the sovereign right to issue law and regulations regarding the customs, taxes, sanitary laws, and the laws of security, safety, immigration and others. Further, Article 13(3) is a catch-all provision which claims all other rights in accordance with LOSC 1982 and other rules of international law. Article 13 reflects Articles 56 and 60 LOSC 1982, although the use of the word "security" by Saudi Arabia in Article 13 is not found in the

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<sup>421</sup> For the text see Appendix V of A. A. El-Hakim, *The Middle Eastern States and the Law of the Sea* (Manchester University Press, Manchester, 1979), p. 204. It was translated by El-Hakim from a copy of the original Arabic acquired by courtesy of the Ambassador of Kuwait in London, see p. 204, n. 1.

<sup>422</sup> For discussion of this Decree see Chapter 4 of this thesis.

<sup>423</sup> (2012) 70 *LOS* 15.

corresponding LOSC 1982 provision. This addition of “security” was also made by Iran in its 1993 Law as discussed below.

Article 17 confirms that the Kingdom’s continental shelf comprises the seabed and subsoil of the submarine areas extending beyond the territorial sea throughout the natural prolongation of its land territory. Article 18(1) states that the Kingdom exercises its sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. Article 18(2) defines the aforementioned natural resources as the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, namely organisms which, at the harvestable stage, are either immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil. Both Article 17 and 18 reflect LOSC 1982.

Article 19 states that the Kingdom has the exclusive right to authorize drilling in the continental shelf for all purposes. This mirrors Article 81 LOSC 1982. However, Article 19 goes on to state that Saudi Arabia can exploit the subsoil by digging tunnels regardless of the depth of the water above the seabed at that location. This provision does not appear in LOSC 1982.

Article 22 confirms that this statute does not invalidate previous agreements between the Kingdom and neighbouring states regarding maritime borders or the exploitation of natural resources.

It is notable that the Saudi Statute, despite its name, does not include provisions governing delimitation of the continental shelf and EEZ, making no reference, for example, to the equidistance line.<sup>424</sup>

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<sup>424</sup> As seen in Chapter 4, this omission is also in respect of the delimitation of the territorial sea and contiguous zone.



## **Observations on the legislation of Saudi Arabia and the degree of its conformity with international law**

Saudi Arabia's legislation demonstrates a significant degree of conformity with international law. From the early 1949 Proclamation, there was a desire to reflect the Truman Proclamation in the nature of the jurisdiction over the continental shelf. The 2012 Statute also frames the expression of rights over the continental shelf in accordance with international law in the form of LOSC 1982, although as set out above, the right to exploit the subsoil by digging tunnels regardless of the depth of the water above the seabed at that location goes does not have a corresponding provision in LOSC 1982.

The 1974 Declaration established rights in an EFZ rather than an EEZ. This has been developed by the 2012 Statute into a claim to an EEZ. The description of the rights in the EEZ largely comply with LOSC 1982, and indeed, as stated above, the 2012 Statute contains a catch-all provision which claims all other rights contained in LOSC 1982 and other rules of international law. However, it is of particular note, as set out above, that the 2012 Statute makes an addition, not found in LOSC 1982, of the word "security" to the list of matters over which it has jurisdiction in relation to its artificial islands, installations and structures in the EEZ. It may be noted that Saudi Arabian legislation on the contiguous zone (found in Chapter 4 of this thesis) added "security" (as well as matters pertaining to the environment and navigation) to the matters of infringement for which the contiguous zone can be used, which again fell outside the provisions in LOSC 1982. The issue of "security" is clearly a matter of some importance to Saudi Arabia in both these zones.

Delimitation of the continental shelf was stated in the 1949 Proclamation to be in accordance with equitable principles, which as stated above, was in accordance with the Truman Proclamation 1945 and indeed with customary international law at the time. Delimitation of the continental shelf has not been dealt with further by any Saudi Arabian legislation since that time. It is of interest also, that while the 1974 Declaration invoked equidistance for the delimitation of the EFZ claimed in that legislation, no further legislation on the delimitation of the EEZ was issued. It has been noted above that the reference to equidistance in relation to delimitation of the EFZ/EEZ is not matched in LOSC 1982. However, despite the dearth of legislative provision by Saudi Arabia on delimitation, the next step to take is to examine the Saudi Arabian

continental shelf delimitation by way of its bilateral agreements and place this in the context of the international Conventions and also of international case law. This exercise is carried out in Chapters 6 and 7 of this thesis.

## **Iran**

On 19 May 1949 a Bill was submitted to the Iranian Parliament relating to sub-sea resources. The opening statement of the Bill states that Iran's claim is made in view of international regulations passed recently on the subject of natural resources, and is clearly based upon the Truman Proclamation 1945. Article 1 states that the natural resources at the bottom of the sea and under the bottom of the sea up to the limits of the continental shelf belong to the Iranian Government. Article 2 states that delimitation of the "continental shelf" with another adjacent country will be fixed equitably between the states with respect to the natural resources of the continental shelf.<sup>425</sup> However the Bill did not become law until 1955.

In the Act of 18 June 1955 on the Exploration and Exploitation of the Natural Resources of the Continental Shelf of Iran, Iran issued similar legislation to the flurry of Proclamations of the other Gulf States of 1949.<sup>426</sup> Unlike those Proclamations, the word "continental shelf" is used. Like the Saudi Proclamation, Article 2 of the 1955 Act states that "the (submarine) areas as well as the natural resources of the sea-bed and subsoil thereof, up to the limit of the continental Shelf" adjacent to Iran's coast and that of its islands belong to Iran and "remain under its sovereignty". Article 3 states that where Iran's continental shelf overlaps with another state's, the dispute shall be resolved according to equity.<sup>427</sup>

Iran issued a Proclamation of 30 October 1973 concerning the outer limit of the Exclusive Fishing Zone of Iran in the Persian Gulf and the Sea of Oman.<sup>428</sup> Oman was the first to establish its claim in this respect in 1972, having been influenced by

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<sup>425</sup> See (1949) 5 *REDI* 347 where the text of the Bill is reproduced.

<sup>426</sup> (1974) 16 U.N. Leg. Ser. 151

<sup>427</sup> (1970) 15 U.N. Leg. Ser. 366, where the text of Article 3 is in French.

<sup>428</sup> (1976) 18 U.N. Leg. Ser. 334.

trends in state practice and UNCLOS III, with Iran doing so in the following year.<sup>429</sup> Article 1 of Iran's Proclamation 1973 states that the outer limit of the EFZ in the Gulf is the outer limit of the superjacent waters of the continental shelf of Iran. Article 1(a) states that where the continental shelf of Iran has been delimited under bilateral agreements with other states, the outer limit of the EFZ is the outer limit of the continental shelf as specified in those agreements.

Article 1(b) states that where the outer limit of the continental shelf has not been delimited in bilateral agreements, unless otherwise agreed, the outer limit of the superjacent waters of the continental shelf of Iran shall be, for the purpose of delimiting the EFZ, the median line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial seas of the parties concerned are measured. As has been seen already, this provision for the delimitation of the EFZ on the basis of equidistance is not what was eventually decided in respect of delimitation of the EEZ in Article 74(1) LOSC 1982.<sup>430</sup> Iran's endorsement of equidistance for delimitation of the EFZ did not extend to the same for the continental shelf itself. In 1955 Iran had stated that delimitation of the continental shelf would be effected according to the principles of equity.

Article 2 sets the outer limit of the EFZ of Iran in the Sea of Oman as 50 nm from the baseline from which the breadth of territorial sea of Iran is measured. Again in this Article, Iran confirms that in areas where the EFZ of Iran and that of another state may overlap, unless otherwise agreed, the boundary shall be the median line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial seas of the parties are measured. Considering the language used in these provisions which incorporate equidistance, Iran utilized the phrase "unless otherwise agreed". This appeared in the provisions on delimitation of the territorial sea in TSCZ 1958 and the continental shelf in CSC 1958 (as well as in the LOSC 1982 in respect of delimitation of the territorial sea), where equidistance

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<sup>429</sup> It is therefore not the case, as contended by C.G. MacDonald in *Iran, Saudi Arabia and the Law of the Sea* (London, Greenwood Press, 1980), p. 200, that Iran set a precedent in the Gulf when it claimed an EFZ in October 1973. He does not in fact mention Oman's legislation on the EFZ at all.

<sup>430</sup> As has been seen, Article 74(1) provides that delimitation shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the ICJ in order to achieve an equitable solution. Article 74(2) states that where no agreement can be reached within a reasonable period of time, the states involved shall resort to the procedures for settlement of disputes in Part XV LOSC 1982.

is referred to. However, unlike those provisions, there is no reference to historic title or special circumstances which may negate the use of equidistance.

As seen in Chapter 4, Iran issued the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea, 1993.<sup>431</sup> Article 14 confirms Iran's sovereign rights and jurisdiction in the EEZ with regard to:

- (a) Exploration, exploitation, conservation and management of all natural resources, whether living or non-living, of the seabed and subsoil thereof and its superjacent waters, and with regard to other economic activities for the production of energy from water, currents and winds. These rights are exclusive;
- (b) Adoption and enforcement of appropriate laws and regulations, especially for the following activities:
  - (i) The establishment and use of artificial islands and other installations and structures, laying of submarine cables and pipelines and the establishment of relevant security and safety zones;
  - (ii) Any kind of research;
  - (iii) The protection and preservation of the marine environment;
- (c) Such sovereign rights as granted by regional or international treaties.

Much of this mirrors Article 56 LOSC 1982 which provides for rights jurisdiction and duties in the EEZ. However, there are a number of differences in which Iran's provisions go beyond LOSC 1982, namely: Iran's Article 14 (b)(i) which adds the words "laying of submarine cables and pipelines and the establishment of relevant security and safety zones"; Article 14(b)(ii) which refers to "any kind of research" instead of "marine scientific research" in Article 56(b)(ii) LOSC 1982; and Iran has added Article 14(c) which does not appear in LOSC 1982.

Article 15 of the 1993 Act confirms Iran's sovereign rights and jurisdiction over its continental shelf. In this regard it states that its Article 14, set out above, applies "*mutatis mutandis*" to Iran's rights and jurisdiction in its continental shelf. This departs from Article 77(1) LOSC 1982 which instead provides that a state exercises over the continental shelf sovereign rights "for the purpose of exploring it and exploiting its natural resources". Conversely, in the 1993 Act, there is also no equivalent of Article 80 LOSC 1982 which provides that the same rights of construction and management of artificial islands, installations and structures in the

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<sup>431</sup> (1993) 24 *LOS* 10.

EEZ as set out in Article 60 applies “*mutatis mutandis*” to artificial islands, installations and structures on the continental shelf. It is of note that Iran does not provide for an outer limit for its EEZ.

Iran’s Article 15 states that the continental shelf comprises the seabed and subsoil of the marine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory. This utilizes the same language of the definition in Article 76(1) LOSC, however, it does not include the latter’s method of setting the limit of the continental shelf. Indeed, Iran does not set the limit of its continental shelf.

Article 19 deals with delimitation of the EEZ and continental shelf, stating that their limits, unless otherwise determined in accordance with bilateral agreements, shall be a line every point of which is equidistant from the nearest point on the baselines of the two States. As will be seen in due course in this chapter, this is similar to the provisions of other Gulf States, but it is not in accordance with the delimitation provisions of the EEZ and continental shelf in LOSC 1982.

A number of States objected to Iran’s provisions relating to the EEZ and continental shelf in Article 14 of its 1993 Act, and although not strictly matters of delimitation, it is useful to consider these protests briefly on the basis that they have relevance for the wider consideration of Iran’s compliance with international law. The US, in a protest dated 11 January 1994, stated that the provision in Article 14(b)(i) for “security zones” to be established in the EEZ is impermissible in the light of Article 60(4),(5) LOSC 1982 which provides only for “safety zones” of a radius not exceeding 500 metres around artificial islands and other installations and structures within the EEZ. The US was concerned about the distinction Iran drew in Article 14(b)(i) between “security” and “safety” zones, with only the latter being provided for in the limited circumstances as outlined by the US. Further, the US was clearly concerned about the lack of definition of the size of such a security zone as claimed by Iran.

The US further protested about the apparent provision in Article 14(b)(i) for more authority to control the laying of submarine cables and pipelines on Iran’s continental shelf than is permitted by international law as reflected in Article 79 LOSC 1982, which, *inter alia*, gives states rights to lay submarine cable and pipelines in the continental shelf of other states. The US also protested against the phrase “any kind of research” in Article 14(b)(ii) which, as discussed above, goes beyond the

reference “marine scientific research” the regulation of which only is provided for by LOSC 1982 in the EEZ. The US was keen to make the point that hydrographic surveys conducted seaward of the territorial sea are not marine scientific research.<sup>432</sup> Iran replied stating that due to the high number of oil exploitation platforms and the volume of shipping traffic, a security zone is “completely necessary” for the security of installations as well as international navigation. With regard to the laying of submarine pipelines and cables Iran considered prior permission a necessary requirement, and referred to its reservations on this subject when it signed the CSC 1958.<sup>433</sup>

Qatar also protested against Article 14 in a similar vein to the US in two ways. Firstly Qatar protested against Article 14 giving Iran greater authority to control the laying of submarine cables and pipelines than permitted in Article 79 LOSC 1982.<sup>434</sup> Secondly, Qatar protested against the reference to “any kind of research” in Article 14(b)(ii) when “international law” permits a state to conduct only marine scientific research in its EEZ. Iran replied stating that there is no customary law limiting the rights of a state to have control over the laying of cables and pipelines by other states in its continental shelf. Here, Iran relied on the fact that it was not a party to either CSC 1958 or LOSC 1982.<sup>435</sup> Iran also correctly stated that according to Article 79(3) LOSC 1982 the delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal state. However, this did not answer the entirety of the concern that Iran was trying to control the laying of pipelines and cables *ab initio*. Iran further dubiously justified the reference to “any kind of research” in the EEZ in Article 14(b)(ii) on the basis that:

any research conducted in that area would be directly linked to the rights of coastal States concerning the exploration and exploitation of living and non-living resources.<sup>436</sup>

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<sup>432</sup> For the US’ protest see (1994) 25 *LOS* 101-3.

<sup>433</sup> See Iran’s comments on the US’ viewpoints, communicated by the Permanent Mission of Iran to the U.N. in a note verbale No. 224 of 24 May 1994, at (1994) 26 *LOS* 35-8.

<sup>434</sup> See note verbale outlining the position of Qatar with regard to Iran’s 1993 Act, 32 *LOS* (1996) 89-90. The note verbale incorrectly refers to the offending provision as Article 14(a); the correct reference is Article 14(b)(i).

<sup>435</sup> It is not at all clear that customary law was on Iran’s side, as hindering other states laying cable and pipelines in its continental shelf is arguable in breach of the concept of the freedom of the high seas.

<sup>436</sup> Iran further stated that it had reserved its right for the adoption and enforcement of appropriate laws and regulations in this respect. For Iran’s reply to Qatar see letter dated 18 October 1996 from the Permanent Representative of Iran addressed to the Secretary-General of the U.N., at (1997) 33 *LOS* 86- 88.

## **Observations on the legislation of Iran and the degree of its conformity with international law**

With regard to the provision of rights over the continental shelf and the EEZ, while this began modestly in the 1955 Act in respect of the continental shelf (and with little detail in respect of the EFZ in the 1973 Proclamation), these were set out more extensively and in far more detail in the 1993 Act. As set out above, there are a number of departures in the 1993 Act from LOSC 1982. While the description of the continental shelf accords with LOSC 1982, Iran claims rights more widely in the continental shelf as well as the EEZ. As indicated above, these claims have been subject to detailed objections by the US and Qatar. It is also of particular interest that one of the ways in which Iran's 1993 Act goes beyond LOSC 1982 is the provision for the establishment of "security zones" as well as "safety zones" in its EEZ, while LOSC 1982 only allows states to establish safety zones of a radius not exceeding 500 metres around artificial islands and other installations and structures within the EEZ. As seen above, the US objected to Iran's legislation in this respect. Iran's response was that security zones were essential because of the many installations which exist for oil exploration in its EEZ as well as to protect navigation. This is an interesting glimpse into two major concerns for Iran in the Gulf. This mirrors the findings of Chapter 4 of this thesis that Iran went beyond LOSC 1982 in providing in its 1993 Act for a contiguous zone in which it could adopt measures necessary to prevent infringement of laws relating to matters of "security" (as well as "maritime" and "environmental" matters).

Delimitation of the continental shelf in the 1955 Act was stated to be in accordance with "equity". However, in the 1973 Proclamation, delimitation of the EFZ was stated to be by way of the equidistance line, and this method was extended to both the continental shelf and the EEZ in Iran's 1993 Act. These provisions are not in accordance with LOSC 1982, although they do reflect the importance given to equidistance in international case law.

## **Kuwait**

The States under British protection also issued proclamations declaring rights to contiguous subsoil and seabed areas in 1949, including Kuwait on 12 June 1949. This Proclamation, like the others in the Gulf, was also similar to the Saudi Proclamation in declaring that the seabed and subsoil appertain to the State, being subject to its jurisdiction and control presumably so that British interests were not undermined in the region by any differences of approach. This Proclamation, like the others, also made no reference to the continental shelf specifically and specifies that delimitation of the seabed and subsoil areas would be determined on equitable principles.

In a note verbale of 12 July 1971 provided by Kuwait to the U.N., Kuwait stated that although it was not a party to the CSC 1958, it was aware of the provisions of the Convention, and had adopted the median line in delimiting the boundary of its continental shelf with its neighbours.<sup>437</sup> At this time however, Kuwait had only entered into one bilateral agreement, namely the Kuwait-Saudi Arabia 1965 agreement partitioning the Neutral Zone.<sup>438</sup>

In Decree No. (317) of 2014 Concerning the Delimitation of the Marine Areas Pertaining to the State of Kuwait, as amended, Kuwait legislated in respect of its EEZ and continental shelf.<sup>439</sup>

Article 6 claims an EEZ, and Article 7 defines the continental shelf in accordance with Article 76 LOSC 1982. The breadth of these zones are not specified. However, it is of note that in both these provisions, Kuwait goes further than LOSC. In Article 6 in relation to its EEZ, it “shall exercise the same rights and powers exercised in its territorial sea, relative to natural resources and wealth, in addition to the rights and powers established by Article 56” of LOSC 1982. Similarly, in Article 7, in respect of the continental shelf, it “shall exercise the rights and powers it exercises in its territorial sea, relating to natural resources and wealth of the seabed and subsoil thereof, as well as the other rights contained in Article 77” of LOSC

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<sup>437</sup> Reproduced in (1974) 16 U.N. Leg. Ser. 152.

<sup>438</sup> See Chapter 6 of this thesis.

<sup>439</sup> Website of the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, U.N. Secretariat, at: [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/Kuwait\\_Legislation.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/Kuwait_Legislation.pdf) (accessed 8 July 2016). Article 5 was amended by Decree No. (141/2015) issued on 12 May 2015



1982. Although somewhat cryptic, these provisions goes beyond the LOSC 1982. While Articles 56 and 77 allows for sovereign rights for the purpose of exploring, exploiting and managing resources in the EEZ and the continental shelf, as well as other jurisdiction in the EEZ as set out in Article 56(1)(b) LOSC 1982, there is a distinction between such rights, and the sovereignty which might be enjoyed over the “natural resources and wealth”, to use the wording in the 2014 Decree, in the territorial sea.

With regard to delimitation of the EEZ and the continental shelf, the median line shall be the boundary with any adjacent or opposite state, in the absence of agreement, echoing provisions of other Gulf States.

### **Observations on the legislation of Kuwait and the degree of its conformity with international law**

Kuwait’s initial position in respect of its rights in the continental shelf in its 1949 Proclamation was, as has been seen, in line with the Truman Proclamation 1945. However, as indicated above, in its 2014 Decree, Kuwait’s rights in both the continental shelf and the EEZ go beyond what is contained in LOSC 1982. However, whether this really does amount to the exercise of new more extensive powers is unlikely. By way of explanation, it will be remembered that the 1949 Proclamations of various Gulf States on the continental shelf claimed jurisdiction and control over the seabed and subsoil instead of just over the natural resources contained within them. It has already been observed earlier in this chapter in relation to Saudi Arabia’s legislation that there is nothing significant in this distinction. By analogy, it is arguable that in the same way, Kuwait’s legislation does nothing controversial, and indeed this argument is fortified by Kuwait’s references in its legislation to CSC 1958 and LOSC 1982, including a reference to its ratification of LOSC 1982 in the Preamble to the 2014 Decree.

With regard to the delimitation of the continental shelf, in Kuwait’s 1971 note verbale, there was a clear acknowledgement of CSC 1958 and accordingly, it was stated that the boundary of its continental shelf was to be by way of the equidistance

line reflecting the reference to equidistance in CSC 1958. It is of note that the equidistance line was the method of delimitation provided for in the 2014 Decree in respect of both the continental shelf and EEZ. This does not reflect the corresponding provisions in LOSC 1982, although it does reflect the place given to equidistance in international case law.

### **The UAE, Oman and Bahrain**

#### **i. The UAE**

Prior to the formation of the UAE in 1971, the Gulf Sheikhdoms which subsequently became part of the U.A.E were under British protection. These Sheikhdoms issued proclamations declaring rights to contiguous subsoil and seabed areas in 1949 as part of a series which also included Kuwait (referred to above), Bahrain and Qatar (referred to below) and which were all in the same terms. The Gulf Sheikhdoms issued their Proclamations as follows: Abu Dhabi on 10 June, Dubai on 14 June, Sharjah on 16 June, Ras al Khaimah on 17 June, Ajman on 20 June, and Umm al Qaywayn on 20 June.<sup>440</sup> As referred to above in respect of Kuwait, these Proclamations were similar to the Saudi Proclamation in declaring that the seabed and subsoil appertain to the States, being subject to their jurisdiction and control, They also made no reference to the continental shelf specifically. Further, they all specify that delimitation of the seabed and subsoil areas would be determined on equitable principles.

The UAE issued its first legislation on the law of the sea as a single entity in the form of the Declaration of the Ministry of Foreign Affairs concerning the Exclusive Economic Zone and its delimitation dated 25 July 1980.<sup>441</sup>

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<sup>440</sup> For the texts of the Proclamations see (1951) 1 U.N. Leg. Ser. 22-30

<sup>441</sup> Website of the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs U.N. Secretariat, at: [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/ARE\\_1980\\_Declaration.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/ARE_1980_Declaration.pdf) (accessed 9 July 2016).

Article 1 asserts that the UAE possesses an EEZ adjacent to its main coasts and to the coasts of its islands both in the Gulf Sea and the Sea of Oman. Article 2 states that the EEZ shall be measured from the baselines from which the territorial sea of its coasts including that of its islands is measured. Article 3 does not set the limit at 200nm. Once again, as seen in the case of other Gulf States, this is unsurprising because the UAE would not be able to claim it due to overlap with other states. Instead, and similar to Qatar's Declaration of 1974, it states that the outer limit of the EEZ shall be determined according to the provisions of the agreements concluded by the Emirates in relation to their continental shelf. In other words, the outer limit of the EEZ will coincide with the outer limit of the continental shelf as agreed. If there are no such agreements, the outer limit of the EEZ shall extend to the median line every point of which is equidistant from the nearest points of the baselines. Again, there is a provision of delimitation of the EEZ by means of equidistance, which is not characterised by the generality of the provision on delimitation of the EEZ which states that the aim is to achieve an "equitable solution" in LOSC 1982.

Article 4 states that the UAE shall exercise full sovereign rights over the natural resources located within its EEZ for the purpose of the exploration, exploitation, management, development and conservation of such resources. As will be seen later in this chapter, this is reminiscent of Qatar's expression of its rights within its fishing zone. However, the UAE Declaration reflects more closely the language of Article 56 LOSC 1982 in the Declaration's reference to rights in the EEZ. It also states that the UAE shall possess full rights of jurisdiction within the EEZ for the purpose of exercising supervision over scientific research conducted therein and taking the requisite measures for the protection of the marine environment and for the construction of the structures, installations and artificial islands needed for the purposes of the zone.

Article 6 confirms that the rights exercised by the UAE over the EEZ shall not prejudice international navigation rights of states provided for by international law.

As seen in Chapter 4, the UAE, as a single entity, issued Federal Law No. 19 of 1993 on Determination of the off-shore territories of the United Arab Emirates.<sup>442</sup>

Article 12 states that subject to Articles 23(2) and 24 (about which, see below), the UAE shall have an EEZ the breadth of which does not exceed 200nm from the baseline from which the breadth of the territorial sea is measured. This reflects Article 57 LOSC 1982.

Article 13 states that the UAE shall have in the EEZ sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed, and of the seabed and its subsoil, and with regard to other activities for the economic exploration and exploitation of the zone, such as the production of energy from the water, currents and winds. Article 14 states that in the EEZ there shall be jurisdiction with regard to 1) the establishment and use of artificial islands, installations and structures 2) marine scientific research and 3) the protection and preservation of the marine environment. Both these Articles repeat what is in Article 56(1)(a), (b) LOSC 1982.

Article 17 states that subject to Articles 23(2) and 24 (about which, see below), the continental shelf comprises the seabed and subsoil of the submarine areas extending beyond the territorial sea and considered a natural prolongation of the land territory to the outer edge of the continental margin, or to a distance of 200nm from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend to that distance. This repeats what is contained in Article 76(1) LOSC 1982 as the definition of the continental shelf.

Article 18, modelled upon Article 77 LOSC 1982, states that there shall be exercised over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources and that these rights are exclusive to the UAE. This is because no one may exercise them without its express consent and that the rights over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation. Article 18 goes on to state that the “natural resources” referred to:

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<sup>442</sup> Certified translation of the law published in the UAE Official Gazette, Vol. No. XXIII, Issue No. 257, dated 20 October 1993, p. 7-17. See also version in (1994) 25 *LOS* 94-100.

consist of the mineral and other non-living resources of the seabed and subsoil together with the living organisms belonging to sedentary species, meaning the organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 20 is common to both the EEZ and the continental shelf under the UAE regime. Article 20(1) states that in both these zones the State shall have the exclusive right to construct, operate and use 1) artificial islands 2) installations and structures for the purposes of scientific research, preservation of the environment or other economic purposes, and 3) installations and structures which enable the State to exercise its rights. Article 20(2) confirms that the State shall have exclusive jurisdiction over such artificial islands, installations and structures including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations. Article 20 thus follows LOSC 1982 Articles 60 and 80.

Article 21 states that the State may establish safety zones around the artificial islands, installations and structures referred to in Article 20(2), for the purpose of ensuring their safety.<sup>443</sup> The UAE is to determine the breadth of such zones “taking into account applicable international standards”, not exceeding a distance of 500 metres around them, measured from each point of their outer edge, except where excess is authorized by generally accepted international standards. Such provisions follow Articles 60(4),(5) and 80 LOSC 1982.

Article 19 states that the following provisions apply to the delimitation of the maritime zones of islands belonging the UAE Article 23(2) states that in the absence of agreement between the UAE and another adjacent or opposite state, the outer limit of the continental shelf and the EEZ shall be the median line every point of which is equidistant from the nearest points on the baselines. As has been seen, the UAE provisions on delimitation of the continental shelf and EEZ do not mirror LOSC 1982.

Article 24 stipulates that the UAE shall publish official charts to show accurately the outer limits of the EEZ and the continental shelf. Article 25 makes

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<sup>443</sup> This is in line with Article 60(4) LOSC 1982, although in the latter there is a reference to safety zones around artificial islands, installations and structures in which it may take measures not only to ensure the safety of these structures but also the safety of navigation. The UAE does not refer to the safety of navigation in its equivalent provision.

clear that the implementation of this law shall not affect the validity of contracts and concessions concluded prior to its promulgation for the exploration and exploitation of resources in the maritime zones. Nor shall it affect the constitutional rights or other rights acquired by the Emirates as a result of the exploitation of resources or the rights acquired as a result of any agreements or contracts to be concluded between them regarding these zones. Further, the 1993 Law shall not affect the validity of agreements previously concluded between the Emirates and the Emirates have the right to enter into agreements regarding maritime boundaries between them.

## ii. Oman

The Royal Decree of 17 July 1972 concerning the Territorial Sea, Continental Shelf and Exclusive Fishing Zones of the Sultanate of Oman declared jurisdiction over the continental shelf for the first time.<sup>444</sup> Article 3 states that Oman “exercises sovereign rights over the continental shelf ...for the purpose of exploring it and exploiting its natural resources”. This reflects Article 2(1) CSC 1958 and Article 77(1) LOSC 1982. Article 4 provides that the continental shelf encompasses

the seabed and natural resources upon and beneath the seabed adjacent to the coast of the mainland or of an island, rock, reef or shoal, but outside the territorial Sea of the Sultanate, to a depth of 200 metres or to such greater depths as admit of the exploitation of natural resources.

Clearly this provision reflects Article 1 CSC 1958 apart from the references to “an island, rock, reef or shoal”. It does not reflect the reference to distance which was eventually to appear in the definition of the continental shelf in Article 76 LOSC 1982.

Oman is extremely rich in fisheries, and therefore it is not surprising that this first national legislation sought to protect them by way of an EFZ. Article 5 provides for an EFZ over which Oman exercises sovereign rights for the purposes of

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<sup>444</sup> For the text see (1974) 16 U.N. Leg. Ser. 23, The Decree is also printed in *Limits in the Seas*, No. 61, “Straight Baselines: Oman (Hypothetical)”, International Boundary Series A (Office of the Geographer, US, June 4, 1975), pp. 1-4.

exploring, developing and exploiting its living resources, including but not limited to fish. Article 6 defines the limit of EFZ as 38nm from the outer limits of the territorial sea.

Article 7 of the 1972 Decree deals with the situation where the territorial sea, continental shelf, and EFZ of Oman overlap with those of another state with either an opposite or adjacent coast. It is stated that the boundary of those maritime zones with Oman shall be the median line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of Oman and the territorial sea of other states is measured. In relation to delimitation of the continental shelf, Oman's provision partly reflects Article 6(1),(2) CSC 1958 which refers to delimitation between states by way of equidistance, although the latter states that equidistance is only applicable in the absence of agreement between the parties, or unless another boundary is justified by special circumstances. Again Oman has not referred to either aspect. Oman's provision does not reflect Article 83(1) LOSC 1982 which moved away from CSC 1958 in providing, as has been seen in an earlier chapter, that delimitation shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statue of the ICJ, in order to achieve an "equitable solution".

In relation to Oman's provision for delimitation of the EFZ by way of equidistance there was no reference in any convention to the EFZ/EEZ until the LOSC 1982 which provided for a 200nm EEZ. The provisions for delimitation of the EEZ in Article 74(1) of the LOSC 1982 are the same as those for the continental shelf, and therefore the above comments apply in relation to the difference in Oman's provision on the EFZ.

Oman's Royal Decree No. 44 of 15 June 1977 amended Article 6.<sup>445</sup> Article 1 of the 1977 Decree states that the area designated by the Sultanate for fishing purposes is extended to 200nm offshore, to be measured "from the basic lines by which territorial waters on the high seas are measured". This clearly reflects the growing acceptance of a 200nm EEZ/EFZ which occurred amongst states during

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<sup>445</sup> (1980) 19 U.N. Leg. Ser. 244.

UNCLOS III and before the finalisation of the 200nm EEZ in LOSC 1982.<sup>446</sup> Article 2 of the 1977 Decree states that the outer limit of this area in respect of another opposite or adjacent state shall be determined by the mid-line on which every point is equidistant from the nearest points on the baselines from which the territorial sea of Oman and of the other state is measured.

As referred to in Chapter 4, Oman issued a Royal Decree concerning the Territorial Sea, Continental Shelf and Exclusive Economic Zone dated 10 February 1981.<sup>447</sup> Pursuant to Article 10 of the 1981 Decree, the provisions of the Decree of 17 July 1972 and the Royal Decree No. 44/77 of 15 June 1977 and all other provisions which contravene the provisions of the 1981 Decree are therefore cancelled. Article 4 of the 1981 Decree states that Oman exercises sovereign rights over the EEZ for the purposes of exploring, developing and exploiting its natural wealth, whether living or non-living. Article 5 confirms that the zone extends 200nm and is measured from the baseline from which the breadth of the territorial sea is measured. The claim to 200 nm is understandable considering its position in the Gulf and its prospect out to open sea. Both Article 4 and 5 reflect LOSC 1982.

Article 6 of the 1981 Decree states that Oman exercises sovereign rights over its continental shelf for the purposes of exploring and exploiting its natural resources. Article 7 further states that Oman will be issuing a declaration for delimiting the span of its continental shelf. It would seem that Article 7 was promulgated in order to take into account the changes effected by the 1982 Convention.

Article 8 states that in relation to an opposite or adjacent state, the outer limits of the territorial sea, EEZ and continental shelf of Oman shall be the median line

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<sup>446</sup> While Oman, like the other Gulf States, cannot claim a 200nm EEZ or continental shelf in Gulf Sea, it may do so in the Arabian Sea. Oman has in fact indicated to the U.N. that it intends to claim “outer limits” of its continental shelf beyond 200nm from the baseline to the Commission on the Limits of the Continental Shelf, pursuant to Article 76(8) LOSC 1982. Preliminary information compiled in respect of this claim is at the website of Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, U.N. Secretariat, at: [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/omn\\_2009\\_preliminaryinfo.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/omn_2009_preliminaryinfo.pdf) (accessed 9 July 2016). According to the website of the Commission on the Limits on the Continental Shelf, it has not yet received Oman’s submissions; see [http://www.un.org/depts/los/clcs\\_new/commission\\_submissions.htm](http://www.un.org/depts/los/clcs_new/commission_submissions.htm) (updated on 8 July 2016 and accessed 9 July 2016).

<sup>447</sup> (1983) 1 *LOS* 33-34.



every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of Oman and the territorial sea of other such states is measured. Apart from the delimitation of the territorial sea by means of equidistance, as has been seen equidistance to delimit the EEZ and continental shelf is not reflected in the LOSC 1982 provisions.

### **iii. Bahrain**

Bahrain issued a Proclamation declaring rights to contiguous subsoil and seabed areas on 5 June 1949, as did Kuwait and the Gulf Sheikdoms, and was in the same terms. As has been seen above, they all specify that delimitation of the seabed and subsoil areas would be determined on equitable principles (with the exception of Bahrain which refers to “just” principles, although there is no ostensible differentiation), following consultation with the neighbouring states.

Bahrain issued Decree No. 8 of 1993 with respect to the territorial sea and contiguous zone of the State of Bahrain on 20 April 1993.<sup>448</sup> The Preamble states *inter alia* that Bahrain exercises sovereign rights, control and jurisdiction over the seas and the continental shelf adjacent to its shores “in accordance with the rules of international law and within the limits prescribed by that law”. Further, in the Preamble Bahrain recognises that the LOSC 1982 “represents a statement of the rules of contemporary international law which accords with the views of the States generally in relation to the matters dealt with in the provisions of this Law”.

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<sup>448</sup> (1993) 24 *LOS* 5. It is worth noting that although Bahrain is a State constituted by islands, it is does not claim archipelagic status pursuant to Part IV LOSC 1982, and therefore does not claim archipelagic baselines

**Observations on the legislation of the UAE, Oman and Bahrain, and the degree of their conformity with international law**

With regard to the 1949 Proclamations of the Gulf Sheikhdoms, these are in the same terms as those of Saudi Arabia and Kuwait, and are consistent with international law, as explained earlier in this chapter. Further, as set out above, there is a great deal of conformity with LOSC 1982 in the 1980 Declaration and the 1993 Law in the provisions on the UAE's rights in the continental shelf and the EEZ. With regard to delimitation of the boundaries of these zones with other states, the 1980 Declaration stated that this was to be way of the equidistance line in respect of the EEZ. This was repeated in the 1993 Law in respect of both the EEZ and the continental shelf. While these provisions do not reflect the corresponding provisions in LOSC 1982, they reflect the importance given to equidistance in international case law.

As set out above, Oman's legislation also shows a great deal of conformity with international law. The provisions relating to the rights in the continental shelf and EEZ set out in the 1972 Decree and 1981 Decree largely reflect CSC 1958 and LOSC 1982. The provisions on delimitation of both these zones in the 1972, 1977 and 1981 Decrees refer to the equidistance line as the method of delimitation.

Bahrain's legislation is minimal regarding the continental shelf and there is no legislation regarding an EFZ or EEZ. The early 1949 Proclamation was in general in line with international law, as observed in respect of the same Proclamation made by other Gulf States. Further, there is only a brief reference to the continental shelf in the Preamble of the 1993 Decree but Bahrain declares that those rights are exercised in accordance with international law and its limits, specifically invoking LOSC 1982 as a statement of contemporary international law. It is thus possible to observe that Bahrain, while its legislation lacks any specific detail on the continental shelf and EEZ, generally allies itself with international law generally and LOSC 1982 in particular.

## **Qatar and Iraq**

### **i. Qatar**

Qatar also issued a Proclamation declaring rights to contiguous subsoil and seabed areas on 8 June 1949, as did Kuwait, Bahrain and the Gulf Sheikhdoms, which was in the same terms, specifying that delimitation of the seabed and subsoil areas would be determined on equitable principles following consultation with the neighbouring states.

Qatar issued a Declaration by the Ministry of Foreign Affairs of 2 June 1974.<sup>449</sup> Article 1 states that Qatar shall have exclusive and absolute sovereign rights over natural and marine resources and fisheries in the areas “contiguous” to the territorial sea off the coasts of the State of Qatar and its islands, without prejudice to the freedom of international sea and air navigation, “in accordance with the established principles of international law”. It is thus apparent that Qatar was claiming a fishing zone as well as rights over the continental shelf.<sup>450</sup>

Article 1 also deals with delimitation. It states that the outer limits “of these areas” shall be in accordance with bilateral agreements which have been, or shall be, concluded. In the absence of an agreement:

the outer limits of the continental prolongation of the State of Qatar, or the median line in which every point is equidistant from the baseline from which the territorial sea of the State of Qatar and of other States concerned is measured, shall be regarded as the determining factor in accordance with the principles of international law.

Article 2 states that within the area specified in the preceding section, Qatar shall have exclusive rights in respect of:

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<sup>449</sup> Website of the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, U.N. Secretariat, at: [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/QAT\\_1974\\_Declaration.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/QAT_1974_Declaration.pdf) (accessed 9 July 2016).

<sup>450</sup> See El-Hakim (1979) p. 28.

exploration, prospecting, exploitation, development, fishing and the establishment of installations and zones for the security, control and protection of all marine and natural resources, on, under or above the seabed.

In this Declaration, Qatar dealt with a number of issues. For the first time since 1949 when it was under the protection of Britain, Qatar provided for its rights in a fishing zone, and the reference to control of marine and protection of marine resources above the sea bed foreshadows the right to protect and preserve the marine environment in the EEZ contained in Article 56(1)(b)(iii) LOSC 1982. The limits of these maritime areas is not established, and this is unsurprising considering that due to the dimensions of the Gulf as a semi-enclosed sea, and therefore the overlap with the maritime zones of other states, Qatar would not be able to claim a 200nm continental shelf or EFZ, as provided for in LOSC 1982. Instead, there are provisions for delimitation where these maritime zones overlap with those of other states. Delimitation of the areas mentioned in Article 1 are to be established by agreement (whether agreed to already or not). So, it is apparent that in the case of a bilateral agreement on delimitation of the continental shelf, the outer limit of the fishing zone would be that agreed upon in respect of the continental shelf. In the absence of agreement, equidistance is invoked. It is not entirely clear, but it is implied that equidistance applies both to the fishing zone as well as the continental shelf. The reference to agreement reflects Article 6(1), (2) CSC 1958 which dealt with delimitation of the continental shelf, in the absence of agreement, by the equidistance line. Article 6(1) and (2)'s reference to special circumstances negating the use of equidistance, are not reflected by Qatar's provisions. With regard to the fishing zone, the reference to equidistance does not accord with Article 74(1) LOSC 1982 which, as has been seen, refers to the need to achieve an "equitable solution". However, Article 74(1) does refer to agreement to be used to reach that outcome, and the importance to which Qatar gives agreement is in the same vein.

## ii. Iraq

With respect to the continental shelf, Iraq issued an Official Proclamation of 23 November 1957.<sup>451</sup> It refers to Iraq's desire to exploit underwater natural resources contiguous to the territorial sea. Iraq declared that all natural resources existing on the seabed and the subsoil beneath it are the "property" of Iraq. In so doing Iraq claimed ownership of those resources in the same way as the other Gulf States did. Also like the other Gulf States, with the exception of Iran, the Iraq Proclamation does not use the term "continental shelf" but instead refers to the resources under the waters contiguous to the territorial sea. The Iraq Proclamation 1957 goes on to state that Iraq has exclusive general jurisdiction over such resources and over their preservation and exploitation, and the exclusive right to take all measures necessary for the exploration and exploitation of such resources. It further expresses the right to take administrative and legislative measures necessary for the protection of all "constructions" required by the process of exploration and exploitation. It is also stated that the "Government of Iraq wishes to assert that the "sole purpose" of its issue of this Proclamation is the exercise of rights established by international practice". Thus there is at least a general expression of an intention to exercise rights in line with international law.

Iraq elaborated further in a Proclamation of 10 April 1958.<sup>452</sup> This referred to the aforementioned Proclamation of 23 November 1957 and made reference to the rights established in that earlier Proclamation in the waters contiguous to Iraqi territorial waters. The Proclamation of 10 April 1958 confirmed that such works and constructions as have been or will be undertaken in the territorial sea or the waters contiguous to it are subject to Iraqi sovereignty. Iraq also declared "its adherence to international practice...and to the principle of equidistance which guarantees to Iraq freedom of passage into and out of the high seas". This wording is not entirely clear. For example, it does not relate the principle of equidistance to delimitation of the

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<sup>451</sup> Published in the *Government Gazette* No. 4069 of 27 November 1957 and reproduced in (1970) 15 U.N. Leg. Ser. 368.

<sup>452</sup> Published in the *Government Gazette* No. 4128 of 10 April 1958 and reproduced in (1970) 15 U.N. Leg. Ser. 369.

boundary of a particular maritime zone, but instead is a general endorsement of the principle.

In a note verbale of 15 May 1973 provided by Iraq to the U.N., the text of a statement of the Iraqi Ministry of Foreign Affairs made in 1968 was set out.<sup>453</sup> That statement referred to a joint communiqué between Kuwait and Iraq issued on 13 January 1968 which stated that both States had agreed on a “final solution regarding the continental shelves pertaining to both States”.<sup>454</sup> Iraq’s response to this joint statement was to state that in view of the fact that its territorial waters and continental shelf had boundaries with both the States, it declared its sovereignty over those areas. Iraq further states however that it fully adheres to the “rules and principles of international law”.

#### **Observations on the legislation of Qatar and Iraq, and the degree of their conformity with international law**

Like many other Gulf States, Qatar began with a Proclamation in 1949 which, as has been referred to above, was in line with international law at the time. The 1974 Declaration then claimed rights to the continental shelf and fishing zone, explicitly basing these claims on principles of international law, without defining these rights in any detail. Delimitation of the continental shelf, and it would seem, the EFZ as well, is said to be by way of an equidistance line, in the absence of agreement, specifically stating that this is to be in accordance with the principles of international law. CSC 1958 clearly referred to the equidistance line in relation to delimitation of the continental shelf, and it is apparent that Qatar was attempting to align itself with the provisions in that Convention, although this does not reflect LOSC 1982.

With regard to the legislation of Iraq it is similar to the Qatar’s legislation in the manner in which it makes general reference to international law, purporting to comply with it in a general sense. The lack of detail in Iraq’s legislation is

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<sup>453</sup> (1976) 18 U.N. Leg. Ser. 25.

<sup>454</sup> It eventually transpired that no final solution in fact could be reached due to territorial disputes between Iran and Kuwait.

exemplified by its general invocation of the equidistance principle in its 1958 Proclamation but without reference to its application to any particular zone.

**General concluding remarks on the degree of conformity of the Gulf states with the international law of the sea**

From the early Proclamations following the Truman Proclamation of 1945, it may be said that the Gulf States have sought to benefit from the rights afforded to them by international law rules. In general, it may be said that there is evidence of a significant degree of conformity with international law in the provisions governing the rights in the continental shelf and EFZ/ EEZ.

However, as has been noted above, there has been some significant departures, most notably in the legislation of Saudi Arabia and Iran. With regard to Saudi Arabia, its 2012 Statute makes an addition, not found in LOSC 1982, of the word “security” to the list of matters which it has jurisdiction over in relation to its artificial islands, installations and structures in the EEZ. It is of note that Saudi Arabia added “security” (as well as matters pertaining to the environmental and navigation) to the matters of infringement for which the contiguous zone can be used, which again fell outside the provisions in LOSC 1982.

Similarly, one of the ways in which Iran’s 1993 Act goes beyond LOSC 1982 is the provision for the establishment of “security zones” as well as “safety zones” in its EEZ, while LOSC 1982 only allows states to establish safety zones of a radius not exceeding 500 metres around artificial islands and other installations and structures within the EEZ. As seen above, Iran’s response to the US objection was that security zones are essential in light of the need to protect oil platforms in the EEZ which are engaged in the exploration of oil, as well as the need to protect ships in the process of navigating the Gulf waters. Iran also went beyond LOSC 1982 in providing in its 1993 Act for a contiguous zone in which it may adopt measures necessary to prevent infringement of laws relating to matters of “security” (as well as “maritime” and “environmental” matters). The right to set up a security zone in the EEZ is not provided for in LOSC 1982 (only a safety zone). The need for security

and the protection of interests in oil exploration and navigation are crucial factors which arise out of one of the primary uses of the Gulf, namely the exploration and exploitation of mineral resources, and their movement through the Gulf which is therefore replete with vital shipping routes through the narrow Strait of Hormuz.

With regard to the legislation of the Gulf States on delimitation of the continental shelf, it is quite clear that the majority of the Gulf States, namely Iran, Kuwait, UAE, Oman, and Qatar and Saudi Arabia (in respect of the EEZ) provide for delimitation of by means of the equidistance line. This is of great interest, because this is the case even in legislation which postdates LOSC 1982, for example Iran's 1993 Act, the UAE's 1993 Law, and Kuwait's 2014 Decree. As has been noted, while Bahrain and Iraq do not explicitly provide for this, Bahrain invokes international law in its legislation, and Iraq refers to its adherence to the principle of equidistance in general, also expressly finding support in international law. Saudi Arabia, after its early 1949 Proclamation providing for delimitation of the continental shelf by way of equitable principles did not issue any subsequent legislation in respect of delimitation of the continental shelf. However, rather than contradicting the other Gulf States, it is silent on the matter. It is notable that none of the Gulf legislation refers to the special circumstances referred to in CSC 1958 which may cause a departure from the equidistance line in delimitation of the continental shelf. Further, as has been seen, LOSC 1982, does not refer to the equidistance line at all in its provisions on delimitation of the continental shelf and EEZ, rather it refers to an equitable solution. It has however been seen in Chapter 3 of this thesis, that equidistance has been an important feature in delimitation of the continental shelf and the EEZ in international case law, and this provides an important context to the primacy given to equidistance in Gulf legislation. The links which may be drawn between the case law and delimitation in the Gulf will be discussed in the subsequent chapters of this thesis.



## **Chapter 6**

### **The Delimitation of the Maritime Boundaries of the Gulf States**

#### **Introduction**

Having considered the national legislation of the Gulf States in the previous two chapters, the purpose of this chapter is to provide an analysis of the delimitation of the maritime boundaries between the Gulf States. Most of such delimitations have been effected by bilateral agreements between the Gulf States delimiting the continental shelf boundaries between them.

Also included in this chapter is a consideration of the two adjudicated boundaries in the Gulf, namely the *Dubai /Sharjah Border Arbitration* (1981), and the *Qatar/Bahrain* (2001) case before the ICJ.<sup>455</sup> The examination in respect of these adjudications is not intended to be a comprehensive discussion of them, but rather the purpose is to consider the main elements which had a material effect on the drawing of the lines in question. The inclusion of these decisions within a chapter which also deals with delimitation agreements is done with the intention that they can be compared with the agreements, in order that material may be identified which is significant for the research aims of this study as set out in Chapter 1, and which assists in assessing the relationship between Gulf State practice and International Law.

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<sup>455</sup> There is another well-known reported arbitration in relation to the Gulf Sea, namely *Petroleum Development Ltd. v The Sheikh of Abu Dhabi* (1951) 18 ILR 144 but this decided upon rights under an oil concession granted by the Sheikh of Abu Dhabi in 1939, and did not draw any boundary. See also *Ruler of Qatar v International Marine Oil Co Ltd* (1953) 20 ILR. 534 and *Saudi Arabia v Aramco* (1958) 27 ILR 117 which also did not draw a boundary line.

A list of these delimitations appears in Figure 10 below.<sup>456</sup> All references to the sources of the agreements in this chapter are publications of English translations.

1.	1958	Bahrain - Saudi Arabia
2.	1964	Sharjah - Umm al Qaywayn
3.	1965	Kuwait - Saudi Arabia (Partition of Neutral Zone)
4.	1965	Saudi Arabia - Qatar
5.	1968	Abu Dhabi - Dubai
6.	1968	Saudi Arabia - Iran
7.	1969	Qatar - Abu Dhabi
8.	1969	Iran - Qatar
9.	1971	Bahrain - Iran
10.	1974	Iran - Oman
11.	1974	Saudi Arabia- UAE
12.	1974	Iran - UAE (Dubai)
13.	1981	Dubai - Sharjah
14.	2000	Saudi Arabia – Kuwait
15.	2001	Qatar - Bahrain
16.	2008	Saudi Arabia - Qatar

Figure 11: Table showing a list of delimitations of maritime boundaries in the Gulf

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<sup>456</sup> Maritime boundaries between Iran and Kuwait, at the head of the Gulf, were addressed by a draft agreement between the two sides which came about in 1962, but it is not in force because of Iraq's continued territorial disputes with Iran and Kuwait and is not dealt with here.

1. 1958 Bahrain – Saudi Arabia <sup>457</sup>

(signed 22 Feb 1958, entered into force 26 Feb 1958).

This is a boundary between States with opposite coastlines. The agreement is the first dealing with the continental shelf to be concluded in the Gulf and therefore it has acted as an important precedent for the region. Further, it was also the first in the world to provide for the sharing of revenue from resources derived from the seabed.<sup>458</sup> It has three main limbs. Firstly, delimitation of the continental shelf between the opposite coasts of Bahrain and Saudi Arabia, delimitation of the boundary of the Fasht Abu-Sa'fah oilfield, and thirdly, determination of state sovereignty over the islands of Lubainah al-Saghirah and Lubainah al-Kabirah.

For some time, Bahrain had claimed sovereignty over the Fasht Abu-Sa'fah area and the islands of Lubainah al-Kabirah and Lubainah al-Saghirah. Indeed, the Bahrain Petroleum Company (BAPCO) had tried to operate in the region of the islands in 1941, but ceased to do so after objections from Saudi Arabia in 1949. By at least 1954, if not earlier, both States had agreed in principle to divide the Fasht Abu-Sa'fah oil field, but could not agree the method of delimitation of it.<sup>459</sup> Therefore, as an alternative, they agreed to delimit the northern sector of their continental shelf boundary so that it was aligned with the edge of the oil field, thus

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<sup>457</sup> Reproduced in 16 (1974) U.N. Leg. Ser. 409, and *Limits in the Seas*, No. 12, "Continental Shelf Boundary: Bahrain-Saudi Arabia", International Boundary Study Series A (Office of the Geographer, US, March 10, 1970), pp. 2-5. Iran protested against this agreement and declared that it was void, a stance taken as a result of its territorial claim to Bahrain. However this claim by Iran was later renounced. For a discussion of Iran's claim to Bahrain see M. Khadduri, "Iran's Claim to the Sovereignty of Bahrain", (1951) 45 *AJIL* 631-647. For the text of the agreement and diagram of the boundary line, see Appendix, pp 288-292.

<sup>458</sup> G. Blake, "Shared zones as a solution to problems of territorial sovereignty in the Gulf States", in Schofield, R. ed., *Territorial foundations of the Gulf States* (UCL Press, London 1994), pp. 200-210, at p. 205. Blake also refers at p. 210, n.7 to the fact that in *Limits in the Seas*, No. 108, *Maritime Boundaries of the World* (US Department of State, the Geographer, 1990), p.34, it is stated that there are at least 13 joint arrangements in the world providing for the exploitation of resources in the proximity of maritime boundaries, three of which are in the Gulf.

<sup>459</sup> For this history see G. Blake (1994), pp. 206-8. Blake also refers to British archival material, letter from the British Residency, 7 May 1957, *FO 371/126934* which suggests that Saudi Arabia might have been willing for Abu-Sa'fah to be divided equally, see p.210, n.8.

placing the whole oil field on Saudi Arabia's side of the boundary.<sup>460</sup> The agreement provides for a revenue sharing arrangement, pursuant to which Saudi Arabia, which has sovereignty over the field, exploits it and shares the revenues equally with Bahrain.

The entire boundary line is approximately 98.5nm in length.<sup>461</sup> It runs through 14 points and the lines between each point are straight. Clause 1(1) of the agreement refers to the boundary line beginning on the basis of "the middle line", from point 1. This may be taken to be a reference to the median or equidistance line.<sup>462</sup> However, nowhere is there reference to the principle of equidistance, and the agreement does not utilise a true equidistance line. In fact, the boundary is mainly constituted of a number of midpoints between predetermined coastal points, with small islands and low-tide elevations not being chosen as such coastal points.<sup>463</sup> However, drying reefs belonging to both parties were used to draw the modified equidistance line.<sup>464</sup> The locations of the points are set by reference to either fixed geographical landmarks on the territory of both States, or to certain identified latitudes and longitudes and in this regard points 1-6, 10 and 11 are equidistant between fixed landmarks on each State's territory.<sup>465</sup>

At points 1-4 and 7, small islands in between the coasts were not used to determine the mid-point between both States' territory.<sup>466</sup> Point 8 is located on the western extremity of the island of Lubainah al-Saghirah and point 9 is located on the

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<sup>460</sup> J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries* Vol II (Martinus Nijhoff, Dordrecht, 1993), p. 1490.

<sup>461</sup> *Limits in the Seas*, No. 12, "Continental Shelf Boundary: Bahrain-Saudi Arabia", International Boundary Study Series A (Office of the Geographer, US, March 10, 1970), p. 5; *Limits in the Seas* No. 94, "Continental Shelf Boundaries: The Persian Gulf" (Office of the Geographer, US, September 11, 1981), p. 4.

<sup>462</sup> The original Arabic text refers to "al khat al wasat", the translation of which is "the middle line". English translations however refer to the median line, for example the translation in *Limits in the Seas*, No. 12 (1970), at p. 2.

<sup>463</sup> *Limits in the Seas* No. 94 (1981), p. 4. In his commentary on this agreement, C.G. MacDonald states that the boundary line is only an approximate equidistance line, being based upon "predetermined landmarks", and not taking into account the configuration of the coast or certain small islands, see *Iran, Saudi Arabia and the Law of the Sea: Political Interaction and Legal Development in the Persian Gulf* (Greenwood Press, England, 1980), p. 126. At pp.157-8, note 66, he goes on to state that in an interview with Richard Young who claimed to have prepared the draft of the agreement, Young described the agreement as "ad-hoc" and "pragmatic", indicating that it was signed to enable the oil exploitation from the Fasht Abu-Sa'fah oil field to begin.

<sup>464</sup> D. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", in J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries* (Nijhoff, Dordrecht, 1993), Vol I, p. 131 at p.148.

<sup>465</sup> *Limits in the Seas*, No.12 (1970) p. 5.

<sup>466</sup> *Ibid.*, p. 5.

eastern extremity of Lubainah al-Kabirah. Points 12-14 are determined by reference to geographical coordinates, irrespective of the principle of equidistance. After point 12, the boundary line extends north east to points 13 and 14. If an equidistance line was utilised, it would have crossed the Fasht Abu-Sa'fah oil field. Instead, its unity is preserved.<sup>467</sup> As seen in clauses 1(16) and 2(7) the oil field is placed to the left of the boundary line under the sovereignty of Saudi Arabia. Clause 2(7) also states that the exploitation of the oil in this oil field is to be undertaken by Saudi Arabia in the manner it chooses, on condition that it grants to Bahrain one half of the net revenue accruing to Saudi Arabia from the exploitation.<sup>468</sup> In late December 1992, Saudi Arabia increased Bahrain's share to 70% of all revenue for a period of two years.<sup>469</sup>

The two islands of Lubainah al-Saghirah and Lubainah al-Kabirah were left to Bahrain and Saudi Arabia respectively, with the former on Bahrain's side of the boundary line, and the latter on Saudi Arabia's (see Clause 1(8) and (9) of the agreement). Both islands are roughly equidistant from the coasts of both States. Neither of these islands was granted a territorial sea in the agreement.<sup>470</sup>

By the time of this agreement, both Saudi Arabia and Bahrain had issued legislation dealing with their continental shelves in 1958 and 1949 respectively, with delimitation being said in both to be on the basis of equitable principles following agreement with their neighbours. In this agreement, there are two instances of a variation on the principle of equidistance, leading to a modified equidistance line. Firstly, the fact that the line is mostly based on pre-determined landmarks and not the configuration of the coastline. Secondly, small islands between the coasts are not used to determine the midpoints between the two coasts in relation to Points 1-4 and 7. Finally, the Agreement is notable for the legal arrangement for the development of the Fasht Abu-Sa'fah oilfield whereby the continental shelf boundary coincides with the limit of the oilfield. Not only was a main motivation for entering into the agreement economic, economic considerations in the form of the location of the oil

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<sup>467</sup> See the following agreements: Iran-Qatar 1969; Qatar-Abu Dhabi 1969; Bahrain-Iran 1971; Iran-Oman 1974 for their dealings with oil fields when delimiting maritime boundaries.

<sup>468</sup> Subsequent to this agreement a number of joint development zones were established, for example between Japan-Korea, France-Spain (in Bay of Biscay), and Iceland-Norway.

<sup>469</sup> G. Blake (1994), at p. 206.

<sup>470</sup> Cf the following agreements: Saudi Arabia-Iran 1968; Qatar-Abu Dhabi 1969; Iran-UAE (Dubai) 1974. See the entitlement of islands to a territorial sea in Article 10 TSCZ 1958 and Article 121 LOSC 1982.

field influenced the location of the boundary. It will be remembered that Saudi Arabia had legislated for a comprehensive system of straight baselines in its Royal Decree No.33 1958. This claim to straight baselines did not find its way into the agreement and so had no effect on the boundary line as finally agreed.

## **2. 1964 Sharjah - Umm al Qaywayn**<sup>471</sup>

(Signed 1964, entered into force 1964).

This is a continental shelf boundary line between adjacent coastlines. Prior to the formation of the UAE in 1971, both Emirates had their own individual treaty relations with the United Kingdom, which had control of their foreign relations. In 1961, the United Kingdom wished to establish maritime boundaries between the Trucial States in order to advance the exploration of hydrocarbon resources.<sup>472</sup> However, a problem experienced by the British Foreign Office at the time was the fact that its hydrographic charts for the area were not adequately precise to enable true equidistance lines to be drawn.<sup>473</sup> This limitation led to the proposal by Britain, to the Parties, of the utilization of the delimitation method which is seen in this agreement.<sup>474</sup> This boundary is part of a series of boundaries proposed by the British to the Trucial States prior to the formation of the UAE in 1971.<sup>475</sup>

Both Parties accepted the British proposal, and the agreement itself consists of two unilateral declarations made by each party.

The mechanism of delimitation consists of bisecting the angle formed by drawing straight lines between the coastal terminal points of the land boundary, resulting in a “simplified” equidistance line.<sup>476</sup> It is a boundary which is essentially

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<sup>471</sup> Agreement printed in J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries* (Nijhoff, Dordrecht, 1993), Vol II, p. 1555. For the text of the agreement and map of the boundary line see Appendix, pp. 293-4.

<sup>472</sup> Charney and Alexander, Vol II (1993), p. 1550.

<sup>473</sup> *Ibid.*, p.1552.

<sup>474</sup> *Ibid.*, p. 1552.

<sup>475</sup> Another such proposal which led to a delimitation agreement is the 1968 Abu Dhabi-Dubai agreement dealt with later in this Chapter.

<sup>476</sup> Charney and Alexander Vol II (1993), p. 1552.

perpendicular to the coast. This method is appropriate in the case of adjacent coastlines.

A feature of the *locus* in question is the island of Abu Musa. Sharjah and Iran both lay claim to this island, creating a long-standing and entrenched dispute between them. It is some 31nm from the land boundary between the two States. In 1971 it was agreed that the island should have a 12nm territorial sea and the lateral boundary extends around the 12 mile arc which denotes the island's territorial sea limit.<sup>477</sup>

### **3. 1965 Kuwait - Saudi Arabia (Partition of Neutral Zone)**<sup>478</sup>

(In force on 25 July 1966).

The Kuwait - Saudi Arabia (Najd) Neutral Zone was established by the Uqair Protocol of 2 December 1922 between these adjacent States. The Neutral Zone is an area of land territory spanning the land boundary between the States. The 1922 Protocol established that in the Neutral Zone, each party would share equal rights until Britain assisted the Parties in reaching further agreement. Despite the fact that the Neutral Zone was believed to contain oil, no guidelines were established to regulate any arrangement regarding this between the Parties. In the event, oil production began and continued throughout the years in the offshore areas, and the common ownership principle was assumed to apply to the offshore area of the Neutral Zone as well to the land territory. In 1963, following years of discussion, an equal partition of the Neutral Zone was agreed in principle, and in July 1965 an agreement was reached dividing the Zone into two equal parts, which would be

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<sup>477</sup> See D. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", in J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries* (Nijhoff, Dordrecht, 1993), Vol I, p. 131, at p.141. This boundary is to the south of Abu Musa. To the north of Abu Musa, the boundary settled in the *Dubai/Sharjah* Arbitration 1981 adopted the same solution, so that the equidistance boundary line deviated around the arc around the island's 12nm territorial sea. See *ibid.*, at p.141, n. 72.

<sup>478</sup> Agreement reproduced at 15 (1970) U.N. Leg. Ser. 760. As stated in n. 1, the official Arabic text is in *Kuwait Al Yoam* ("Kuwait Today"), No. 581, 19 June 1966. For the text of the agreement and diagram of the partition, see Appendix, pp. 295-9.

annexed as each party's territory. Equal rights to exploit hydrocarbon resources were agreed to continue.

Article VII of the agreement established the territorial sea of the partitioned zone as 6nm. According to Article VIII, beyond this 6nm limit, the Parties have equal rights in the submerged resources by means of joint exploitation unless they agree otherwise.

#### **4. 1965 Saudi Arabia – Qatar**<sup>479</sup>

(Signed 4 December 1965, entered into force 31 May 1971).

It is uncertain whether this agreement, which governs both land and sea boundaries between the Parties and which was signed by both Parties, is in force.<sup>480</sup> Nevertheless, looking at the terms of the agreement, and with regard to the maritime boundary, Article 1 states that Dawhat Salwa (the Bay of Salwa) shall be divided equally between the two countries on the basis of equidistance from the two coasts. The States have adjacent coastlines at the point where this boundary would be drawn. The article goes on to state that a straight median line shall be adopted "to the extent possible".

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<sup>479</sup> A.A. El-Hakim, *The Middle Eastern States and the Law of the Sea* (Manchester University Press, Manchester, 1979) states at p. 121 that this agreement is unpublished. However a translation of it can be found at the website of the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, U.N. Secretariat, at: <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SAU-QAT1965OB.PDF> (accessed 22 June 2016). For the text see Appendix, pp. 300-1.

<sup>480</sup> El-Hakim (1979), p. 121. El Hakim therefore states that the offshore boundary line "still remains formally undetermined." Looking at *Limits in the Seas*, No. 94 (1981), as at 1981 the US was of the view that the Saudi Arabia-Qatar boundary remained to be negotiated, see. p. 2. This view was expressed in the later publication of 1990, *Limits in the Seas*, No. 108 "Maritime Boundaries of the World" (First revision, Office of Ocean Affairs, November 30, 1990), p. 27.



## 5. 1968 Abu Dhabi – Dubai <sup>481</sup>

(signed 18 Feb 1968, entered into force on same date).

This is a continental shelf boundary agreement between Parties with coastlines which are adjacent to each other. The agreement refers to a pre-existing agreement between the Parties, and modifies it. That previous agreement established a boundary which was initially an administrative frontier for the purpose of oil exploration and concession in 1951 which was roughly perpendicular to the coast, and which was subsequently adopted by the Parties as their offshore boundary in 1965, in an agreement reached through British mediation, beginning at Ras Hasain on the coast.<sup>482</sup> In 1968, as a result of the modification of the land boundary, when the seaward terminus of the land boundary was no longer desired to be Ras Hasain, the boundary was moved 10km westwards.<sup>483</sup> The same seaward projection was followed, and it remains a straight line.

The agreement does not specify the distance of the boundary's extension seawards, but it may be inferred that the intention was that it would intersect with an Iran – Abu Dubai boundary which was yet to be established. When a boundary was subsequently agreed between the latter two States, the eastern terminal point of that boundary line was the point of intersection with the Abu Dhabi – Dubai boundary.

This is one of the maritime boundaries which Britain proposed to the Trucial States and which were in general composed of straight lines joining the coastal terminal points of the land boundary. The angles formed were then bisected, with the bisectors being extended seaward to delimit the continental shelf boundary, creating a “simplified equidistant line”.<sup>484</sup>

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<sup>481</sup> Agreement published in Charney and Alexander, Vol II (1993), p. 1480, and in *Selected Documents of the International Petroleum Industry 1968* (The Information Department of the Organization of the Petroleum Exporting Countries, Vienna, 1968). For the text of the agreement and a diagram of the delimitation see Appendix, pp. 302-3.

<sup>482</sup> Charney and Alexander, Vol II (1993), p. 1475 -6.

<sup>483</sup> *Ibid*, p. 1475.

<sup>484</sup> *Ibid.*, p. 1477. Charney and Alexander go on to state at p. 1477 that the reason for the selection of such a simplified equidistance line is not clear. Firstly, they refer to a report written by the Research Department of the Foreign and Commonwealth Office Middle East Section, four years after the boundary was established, which states: “[t]he question of adequate mapping both here and on the

It is a very short agreement, stating very little about the principles of delimitation upon which it is based. However, it is apparent that the boundary is approximately perpendicular to the general direction of the coast. Here, in the vicinity of the land boundary between the Parties, the coastline is relatively straight. Such a method is quite frequently used between states with adjacent coasts where there are no unusual coastal features or islands, and it corresponds approximately with a simplified equidistance line.<sup>485</sup> It will be remembered that case law examined in Chapter 3 has utilized this method of delimitation.

Charney and Alexander state that “[e]conomic considerations - a common desire to facilitate offshore oil exploration and production - motivated the delimitation but did not affect the location of the boundary”.<sup>486</sup> While the first part of the statement is clear, the second part is difficult to justify. It is highly arguable that economic considerations did directly influence the location of the boundary as can be seen from the terms of the agreement itself. On the face of it, the agreement makes clear that the boundary line is redefined from the previous boundary agreed in 1965 so that Dubai obtained a maritime area lying to the west of the 1965 boundary and which was to the west of the Fateh oil wells. That area, including the Fateh wells, is therefore to pertain to Dubai. The new boundary is therefore in Dubai’s favour. Further, when considering the history of the re-definition of the boundary, it is clear that economic considerations were an operative factor. In 1966, following the discovery of oil in the vicinity of the Fateh wells by Dubai’s concessionaire, Continental Oil Company, the ruler of Abu Dhabi questioned the validity of the 1965 agreement. The 1968 agreement therefore settles any dispute to this resource-rich area.

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Trucial Coast has been considered more recently, and the consensus of opinion seems to be that existing Admiralty charts are not sufficiently accurate for the construction of true median lines, though probably adequate for the modified lines used in the Persian Gulf”. Charney and Alexander further state that Commander Peter Beazley who was involved in the delimitation and who was a member of the American Society of International Law research project, “clearly recalls that no difficulty was presented by the relevant Admiralty charts *per se*, including their accuracy for navigation and delimitation purposes. He reports that a cartographical problem arose as a result of the fact that the Admiralty chart did not show the position of the land frontier that was necessary for the generation of the maritime boundary. The cartographers had some difficulty accurately transferring on to the Admiralty chart the position of the land frontier which was shown on the sketch maps.”

<sup>485</sup> R.R. Bundy, “Maritime delimitation in the Gulf”, in Schofield, R. ed., *Territorial foundations of the Gulf States* (UCL Press, 1994), p.176, at p. 179, where he also states that other examples of its use include the delimitations between Uruguay and Brazil, and between Panama and Costa Rica.

<sup>486</sup> Charney and Alexander, Vol II (1993) p. 1476.

## **6. 1968 Saudi Arabia - Iran**<sup>487</sup>

(signed 24 Oct 1968, entered into force 29 Jan 1969).

This continental shelf boundary agreement, between States with coastlines which are opposite to each other, firstly deals with the longstanding matter of sovereignty over the islands of Al-‘Arabiyah and Farsi, and secondly, with the delimitation of the continental shelf between the two States. It is the longest continental shelf delimitation in the Gulf, with a length of 138.75nm.<sup>488</sup>

The history of the agreement is of interest. The catalyst behind the Parties wishing to enter negotiations was economic in nature, specifically their overlapping oil concessions; in particular Iran’s oil concession to Pan-American Petroleum Corporation overlapped with Saudi Arabia’s concession to Aramco. This overlap hindered commercial operations in the area.<sup>489</sup> In 1965 the Parties reached a draft agreement which delimited the continental shelf boundary on the basis of equidistance as well as resolving territorial disputes over the islands of Al-‘Arabiyah (allocated to Saudi Arabia), and Farsi (allocated to Iran).<sup>490</sup> Before the agreement was ratified, a new petroleum deposit was discovered by the Iranian concessionaire in the Marjan-Feyerdooon region, mainly situated on the Saudi side of the line as established in the draft agreement. Subsequently, after further negotiations, Saudi Arabia agreed to adjust the boundary to apportion the newly discovered structure more equitably. This amendment to the line was effected in the 1968 agreement.

Turning to the provisions of the agreement, the Preamble states that the Parties are “desirous of determining in a just and accurate manner” the boundary line, “with due respect to the principles of the law and particular circumstances”. Article 1 grants sovereignty of Al-‘Arabiyah Island to Saudi Arabia, and sovereignty of Farsi Island to Iran. It is further agreed that each island has a territorial sea of its own, 12nm in

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<sup>487</sup> The text of the agreement is published at 18 (1976) U.N. Leg. Ser. 403 and in *Limits in the Seas* No. 24, “Continental Shelf Boundary: Iran-Saudi Arabia”, International Boundary Study Series A (Office of the Geographer, US, July 6, 1970), pp. 2-4. For the text of the agreement and a diagram of the boundary line see Appendix, pp. 304-11.

<sup>488</sup> *Limits in the Seas* No. 24 (1970), p. 5.

<sup>489</sup> Charney and Alexander, Vol II (1993) at p. 1520.

<sup>490</sup> *Ibid.*, p. 1520.

width, measured from the line of lowest low water on each of the islands.<sup>491</sup> This is the method of enclaving, which has been discussed in Chapter 3 of this thesis as a feature of case law, and in this case, there is a semi-enclaving effect. It is specifically stated in Article 1(1) that where the territorial seas of each island overlap, there shall be a local boundary line to separate those territorial seas, which is equidistant throughout its length from the lowest low water lines on each island. Both islands are situated very near a hypothetical equidistance line between both mainland coasts, but both are the left of the line, slightly closer to Saudi Arabia than Iran. They both have a maximum elevation of 10 feet and are uninhabited.<sup>492</sup> The islands have no continental shelf rights beyond their territorial seas.<sup>493</sup> The boundary line would have been very different if instead of granting each island a territorial sea, each had been used as a basepoint for an equidistance line. Therefore, the equidistance line has been departed from by giving each island a 12nm territorial sea.

Article 2 states that each state has sovereign rights for the purpose of exploring and exploiting the natural resources in the seabed and subsoil on its side of the boundary line agreed upon. Saudi Arabia (unlike Iran) historically avoided use of the term ‘continental shelf’ due to arguments surrounding the issue whether one in fact existed in the Gulf Sea.

Under Article 3, there are 16 points established by reference to specified latitudinal and longitudinal co-ordinates. Article 3 confirms that except in the vicinity of Al-‘Arabiyah and Farsi, the lines between the points are straight. Between points 1-3 there is essentially an equidistance line between the mainland coasts.<sup>494</sup> Kharg, the Iranian island, has no effect on the line here south of Al-‘Arabiyah and Farsi, as it is too far away. From point A, the line extends in an arc until point B. Between point B and C is the local equidistance line which separates the overlapping territorial seas of the islands. At point C the overlap between the territorial seas ends. Then the

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<sup>491</sup> This is a more specific reference to the baseline than provided in 1958 TSCZ, which contains the more general reference to the low water mark. That Convention was in force at the time of the agreement, although neither State was a party. Nevertheless, it is broadly in accordance with the baseline provisions in that Convention, and the 12nm territorial sea is in accordance with both States’ national legislation which had by the time of this agreement extended their territorial seas to 12nm. As has been seen already, a 12nm territorial sea eventually appeared in LOSC 1982.

<sup>492</sup> *Limits in the Seas* No. 24 (1970) p. 6, n. 4.

<sup>493</sup> In this regard, see also the following agreements: Qatar-Abu Dhabi 1969 (Abu Dhabi’s island of Dayyinah); Iran-UAE (Dubai) 1974 (Iran’s island of Sirri).

<sup>494</sup> *Limits in the Seas* No. 24 (1970) p. 5.

line extends in an arc following the territorial sea of Farsi until point D.<sup>495</sup> Apart from the granting of territorial seas to these islands, and the delimitation of the local boundary between their territorial seas, these islands have been ignored for the purpose of delimiting the boundary line between the two mainland coasts. As referred to below, other small Saudi Arabian islands have also been ignored in calculating the equidistance line.

From point D, the line extends northwards, deviating from the equidistance line. There are two main features in this northern sector of the line. The first main feature is Kharg Island. It is a significant island from the Iranian perspective, containing the main Iranian terminal for the export of oil by tankers.<sup>496</sup> It is approximately 17nm from the mainland of Iran.<sup>497</sup> It has an area of approximately 12 square nautical miles.<sup>498</sup> In addition, Iran's chief oilfields are connected with the island through pipelines traversing along the sea bottom.<sup>499</sup> The second main feature in the northern sector of the agreed boundary line is an oilfield known as the Marjan-Feyerdoo oilfield.

Kharg Island was given half effect in drawing the equidistant boundary.<sup>500</sup> As has been explained in Chapter 3 of this study, the process of giving Kharg half-effect involved drawing a half-effect line. This is a line dividing equally the area between two lines. The first line is one which is equidistant between the Saudi Arabian mainland and Kharg Island (therefore giving the latter full effect). The second line is drawn between both the mainlands of Iran and Saudi Arabia, ignoring Kharg Island.<sup>501</sup> The islands of Nakhilu on the Iranian side of the line, and Abu Ali on the Saudi Arabian side were given partial effect.<sup>502</sup> Other small islands on both sides of the line were ignored in drawing the boundary. For example, Saudi Arabia's islands of Janah, Al-Jurayd, Al-Qurayyin, Qiran and Hurques had no effect on the

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<sup>495</sup> This solution to the presence of islands was also used by Italy and Yugoslavia in islands in the Adriatic Sea. See *Limits in the Seas* No. 9, "Continental Shelf Boundary: Italy-Yugoslavia", International Boundary Study Series A (Office of the Geographer, US, February 20, 1970).

<sup>496</sup> A. Razavi, *Continental Shelf Delimitation and Related Maritime Issues in the Persian Gulf* (Martinus Nijhoff Publishers, The Hague, 1997), p. 174, n.34.

<sup>497</sup> *Limits in the Seas* No. 24 (1970), p. 8.

<sup>498</sup> *Limits in the Seas*, No. 94 (1981), p. 7.

<sup>499</sup> El-Hakim (1979), p. 244, n.54.

<sup>500</sup> See *Limits in the Seas* No. 24 (1970), p. 5.

<sup>501</sup> *Ibid.*, p. 8. For an explanation of the method used in this agreement to give Kharg half effect see Chapter 3 of this thesis. For a diagram, see Figure 8.

<sup>502</sup> Razavi (1997), p. 135.

delimitation of the continental shelf, although they are within 12 miles of the Saudi Arabian coast and of each other, and therefore may be considered as being within the Saudi Arabian baseline, in accordance with the 1958 Saudi Decree on the territorial sea.<sup>503</sup>

Article 4 states that both states agree that neither of them shall conduct, or authorise to be conducted, oil drilling within a zone extending 500 metres in width in the submarine areas on each side of the boundary line as agreed. By exchange of letters, the states agreed further to certain actions they would take or omit from taking with regard to oil drilling operations in such relatively close proximity to each other.

Thus, this line is based upon equidistance. Part of it is essentially equidistant, where it begins in the south, as set out above, and part is a modified equidistance line to take into account Kharg Island. As has already been seen, by the time of this agreement, both Saudi Arabia and Iran had enacted a detailed system of straight baselines, but neither party's claims to such baselines had any influence on the boundary line as agreed.

When the northern sector of the line is examined, it is clear that economic considerations were not only the motivation for the agreement, but also had an impact upon the line in the vicinity of the oilfield. The line was adjusted from that originally agreed in 1965, based upon equidistance, to one which was specifically intended to apportion natural resources in a more equitable manner.<sup>504</sup>

Looking at the northern sector, the line deviates from a strict equidistance line in a series of short straight line segments which are drawn solely in order to effect this apportionment. Indeed, the half-effect that was originally given to Kharg is modified by the part of the line in the region of the petroleum structure in question, and the original equidistance line agreed in 1965 and which originally gave half-effect to Kharg, was further modified in this part of the line in order to apportion the

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<sup>503</sup> El-Hakim (1979), p. 95.

<sup>504</sup> The oil deposit was in fact divided so that Iran was given a very small net gain by way of seabed area, see R. Young, "Equitable solution for off-shore boundaries: the 1968 Saudi Arabia-Iran Agreement", (1970) 64 *AJIL* 152 at p.155.

petroleum structure more equitably.<sup>505</sup> Thus the drawing of this part of the line was motivated purely by economic considerations.

**7. 1969 Qatar – Abu Dhabi**<sup>506</sup>

(signed 20 March 1969, entered into force on same date).

This agreement provides for a continental shelf boundary which extends for 115nm.<sup>507</sup> However, unlike the Abu Dhabi–Dubai 1968 agreement, the boundary is not based on a line perpendicular to the coast. The line’s terminal points, A and D, are equidistant from the coasts of both states. Both State Parties are adjacent to each other, but there are aspects of oppositeness to their relationship due to the concave coastline and therefore the aspects of equidistance are appropriate.<sup>508</sup> The agreement deals with well No. 1 of the Al-Bunduq oilfield, which had been the subject of a dispute between the Parties and which is in the vicinity of the Parties’ continental shelf boundary. The agreement also settles territorial disputes, providing for the UAE’s sovereignty over the island of Dayyinah, and Qatar’s sovereignty over the islands of Al Ashat and Shara’iwah.

The boundary line is constituted by straight lines joining 4 points, A to D, except for a 15nm arc around the island of Dayyinah, in between points B and C which places it on Abu Dhabi’s side of the line. The arc apparently follows the 3nm territorial sea granted to Dayyinah. At the time of the agreement, both states adhered to a 3nm territorial sea, following the practice of Great Britain, with which

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<sup>505</sup> See Charney and Alexander, (1993) Vol II, at p. 1522 who state that “[T]he 1965 agreement [was]...a boundary that gave half-effect to Kharg. This half-effect line was subsequently modified in the 1968 agreement to equitably apportion a petroleum structure in the vicinity of the boundary. The result is a series of straight line segments that zigzag back and forth across the half-effect line”.

<sup>506</sup> The agreement is published at 16 (1974) U.N. Leg. Ser. 403 and in *Limits in the Seas*, No. 18, “Continental Shelf Boundary: Abu Dhabi-Qatar”, International Boundary Studies Series A (Office of the Geographer, US, May 29, 1970) pp. 2-3. For the text of the agreement and a diagram of the boundary line see Appendix, pp. 312-4.

<sup>507</sup> *Limits in the Seas*, No. 18 (1970), p. 3.

<sup>508</sup> Charney and Alexander, (1993) Vol II, at pp. 1542-3 state that “[t]he boundary, while not constructed as an equidistant line, nevertheless approximates such a line” and the use of equidistance is “selective”.

they were still in a relationship of protection. The Parties' claim to a 3nm territorial sea is also relevant for the location of Point D, for which see below.

The treatment of Dayyinah is similar to that of the islands of Farsi and Al 'Arabiyah in the Saudi Arabia-Iran agreement 1968 in that it was given a semi-enclave. Dayyinah had no further effect on the continental shelf boundary. Therefore the line between Points B and C ignores Dayyinah, however it is equidistant along its traverse between the Qatar islands of Arzanah and Shara'iwah.<sup>509</sup>

Shoals were used as basepoints for equidistant parts of the line in two respects. Firstly, Shoals close to the Abu Dhabi mainland were used in establishing Point A.<sup>510</sup> Further, it is apparent that the line CD is apparently equidistant, at selected points, between shoals which are part of both states.<sup>511</sup>

Point A coincides with the southern terminus (point 6) of the continental shelf boundary in the 1969 Iran-Qatar agreement. It also coincides with point 1 of the Iran – Dubai boundary 1974. Point A is also approximately equidistant from Abu Dhabi, Qatar, and Iran.<sup>512</sup> It therefore forms a tri-point between Qatar, Iran and Abu Dhabi.

The agreement sets point B at the location of oil well No. 1 in the Al Bunduq oilfield. This is not an equidistant turning point, rather it was intended to be placed at the location of the oil well as part of the compromise and was selected independently of any consideration of the equidistance principle.<sup>513</sup> However, it has been observed that the coordinates in the agreement do not locate point B precisely on the oilfield, but rather 0.5nm south west.<sup>514</sup>

Point C is a negotiated turning point, with no apparent other rationale behind it.<sup>515</sup> It marks the intersection of the lines from Point B and D, and is not equidistant from both States.<sup>516</sup>

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<sup>509</sup> *Limits in the Seas*, No. 18 (1970), p.4.

<sup>510</sup> *Ibid.*, p. 3, and Charney and Alexander, Vol. II (1993), p. 1543.

<sup>511</sup> *Limits in the Seas*, No. 18 (1970) p. 4 which further elaborates that at a point on line CD the shoal north of the island of Makhasib is 2.0nm from the boundary line, and at a different point on line CD, the south shoal of Fasht al Udayd is 2.0nm from the boundary.

<sup>512</sup> *Limits in the Seas*, No. 18 (1970), p. 3; *Limits in the Seas*, No. 94 (1981), p. 8.

<sup>513</sup> *Limits in the Seas*, No. 18 (1970), p. 4.

<sup>514</sup> *Limits in the Seas*, No. 18 (1970), p. 2, adding that the discrepancy may be caused by map distortion.

<sup>515</sup> *Limits in the Seas*, No. 94 (1981), p. 9.

<sup>516</sup> *Limits in the Seas*, No. 18 (1970), p. 4



According to Paragraph 4(c) of the agreement, point D is where the 3nm territorial seas of Qatar and Abu Dhabi intersect.<sup>517</sup> However, it has been noted that the coordinates referred to in Article 4(c) place point D 1.25nm inside the 3nm limit, and that the correct location of the point should be at D1.<sup>518</sup> Point D lies at the mouth of the Khawr al-Udaid outlet.<sup>519</sup> It is therefore an equidistant point.<sup>520</sup>

Paragraph 6 of the agreement states that both Parties have equal ownership rights of Al Bunduq oilfield. Paragraph 7 states that the oilfield is to be exploited by ADMA (Abu Dhabi Marine Areas Company, pursuant to a pre-existing concession with the Ruler of Abu Dhabi), and all revenues, profits and benefits from such exploitation is to be divided equally between both State Parties. This is reminiscent of the 1958 Saudi Arabia-Bahrain agreement which drew the boundary so as to place the Fasht Abu Safa oilfield under Saudi Arabian jurisdiction, with equal sharing of the profits received from it, although here the boundary line straddles Al Bunduq No. 1 oil well.

Thus there are aspects of equidistance in this line. Further it is quite clear that economic considerations in the form of the location of oil well No. 1 of the Al Bunduq oil field directly influenced the line in that Point B was intended to be located on it, and this ended the Parties' dispute to it.<sup>521</sup>

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<sup>517</sup> *Ibid.*, p. 4.

<sup>518</sup> *Ibid.*, p. 4. See map in Appendix, p. 314.

<sup>519</sup> R.R. Bundy, "Maritime delimitation in the Gulf", in Schofield, R. ed., *Territorial foundations of the Gulf States* (UCL Press, London, 1994), pp. 176-186, at p. 181.

<sup>520</sup> Charney and Alexander, Vol. II (1993), p. 1543.

<sup>521</sup> Saudi Arabia has protested against this agreement, stating, for example, that "it does not recognize this Agreement which purports to delimit a boundary in the maritime area extending from the coast of Saudi Arabia that lies between the neighbouring coasts of Qatar and the United Arab Emirates. Since 1969, Saudi Arabia has protested this Agreement to the States concerned and their predecessor State, and continues to reject this Agreement today." See Declaration regarding the Agreement between Qatar and the UAE on the 1969 agreement, transmitted through letter dated 11 April 2007 from the Permanent Mission of Saudi Arabia to the Office of Legal Affairs of the U.N, translation at 64 (2007) *LOS*, p.38.

## 8. 1969 Iran - Qatar <sup>522</sup>

(signed 20 Sep 1969, entered into force 10 May 1970).

This continental shelf boundary agreement follows on from Iran's agreement with Saudi Arabia in 1968, and Qatar's agreement with the UAE (Abu Dhabi) in 1969. The Preamble of this agreement refers to both Parties wishing to establish the boundary in a "just, equitable and precise manner", "in accordance with international law", although with no specific reference to equidistance. These are states with coasts which are opposite to each other. The agreed boundary line is 131nm long. <sup>523</sup>

Article 1 refers to a boundary line consisting of straight line segments between 6 points. The agreement is based on the principle of equidistance, using basepoints from each mainland, while ignoring islands on both sides of the boundary line.<sup>524</sup> The exact location of point 1, the terminal point in the northwest, was left undetermined, being dependent upon the resolution of the Qatar-Bahrain continental shelf boundary.<sup>525</sup> Therefore the boundary between point 2 and what would be point 1 was left undetermined. Point 6, the south eastern terminal point of the boundary line, coincides with Point A, the northern terminal point of the Qatar – UAE (Abu Dhabi) 1969 boundary.<sup>526</sup> Point 6, approximately equidistant from the coasts of each state party as well as Abu Dhabi, is the tri-point between Iran, Qatar and Abu Dhabi.

Article 2 of the agreement deals with the possible situation arising at a point in time after this agreement comes into force, of a single oilfield or other mineral deposit being found to straddle the agreed boundary line, and part of that oilfield or deposit can be exploited by directional drilling from the other side of the boundary. In that situation, it is clearly stated in Article 2(a) that no well shall be drilled on either side of the boundary so that any producing section of it is less than 125 metres from the boundary, except by mutual agreement between both States. Further, Article 2(b)

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<sup>522</sup> 16 (1974) U.N. Leg. Ser. 416. For text of the agreement and map, see Appendix, pp. 315-8.

<sup>523</sup> *Limits in the Seas*, No. 25, "Continental Shelf Boundary: Iran-Qatar", International Boundary Series A (Office of the Geographer, US, July 9, 1970), p. 4.

<sup>524</sup> *Ibid.*, p. 3; *Limits in the Seas*, No. 94 (1981), p. 6, and Charney and Alexander, Vol. II (1993), p. 1511. Cf R.R. Bundy, "Maritime delimitation in the Gulf", in Schofield, R. ed., *Territorial foundations of the Gulf States* (UCL Press, London, 1994), pp. 176-186, at p. 182, who states that it is not clear if the Iranian islands of Lavan, Hendorabi or Qais have been given any effect.

<sup>525</sup> Eventually resolved by the ICJ in *Qatar/Bahrain* [2001] ICJ Rep 40.

<sup>526</sup> *Limits in the Seas*, No. 25 (1970), p. 4.

provides that both States shall endeavour to agree as to the manner in which operations on both sides of the boundary could be co-ordinated or unitized.

Therefore an equidistance line was used drawn from the Parties' mainlands and which was not modified by a nearby islands. Further, there was an economic motivation behind this agreement.<sup>527</sup> However, there is no evidence that economic considerations had a direct bearing upon the final position of the boundary line.

**9. 1971 Bahrain - Iran** <sup>528</sup>

(signed 17 June 1971, entered into force 14 May 1972).

This continental shelf boundary agreement was reached very shortly after Iran decided to abandon its territorial claim to Bahrain. In 1970, Bahrain asserted its sovereignty, an assertion which was subsequently confirmed by a UN Security Council resolution, which was recognized by Iran in May 1971.<sup>529</sup>

This is an agreement between states with coastlines opposite to each other. The boundary line is approximately 28nm long.<sup>530</sup> It lies in between the Iran-Qatar 1969 continental shelf boundary to the east, and the Iran-Saudi Arabia continental shelf boundary to the west agreed in 1968. The Preamble refers to the aim of establishing a boundary in a "just, equitable and precise manner", "in accordance with international law" with no reference to equidistance or indeed any other method of delimitation. However, the line does seem to be based upon equidistance and this is appropriate in the light of their opposite coastlines.

Article 1 sets out points 1-4 which are identified by geographical co-ordinates. There are two turning points, points 2 and 3, and two terminal points, points 1 and 4,

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<sup>527</sup> The Parties had already granted offshore oils concessions; Qatar to Continental Oil Co., Shell Co, of Qatar and Qatar Petroleum Co. Ltd., and Iran to Iranian Offshore Petroleum Co. and Lavan Petroleum Co. See Charney and Alexander, Vol. II (1993), p. 1512.

<sup>528</sup> Published at 16 U.N. Leg. Ser. (1974), p. 428 and *Limits in the Seas* No. 58, "Continental Shelf Boundary: Bahrain-Iran", (Office of the Geographer, September 13, 1974), pp. 2-3. For text of the agreement and map of the boundary line see Appendix, pp. 319-22.

<sup>529</sup> Charney and Alexander, Vol. II (1993), p. 1482.

<sup>530</sup> It is referred to as 28.28nm in length in *Limits in the Seas*, No. 58 (1974), p. 3, and 28.3 nautical miles in length in *Limits in the Seas*, No. 94 (1981), p. 3.

eastern and western respectively. Geodetic straight lines connect the four points. Point 1 coincides with point 2 of the Iran-Qatar boundary agreed in 1969, and point 4 coincides with point 1 of the Iran-Saudi Arabia agreement 1968.<sup>531</sup> Therefore these two points are not based on equidistance.<sup>532</sup> Rather, their location is based upon the pre-existing delimitation agreements. Points 2 and 3 are nearly the same distance from Bahrain and Iran, and therefore it has been assumed that they are equidistant points, even though they are slightly nearer to Iran.<sup>533</sup> Charney and Alexander state that the turning points 2 and 3 appear to have been set by the equidistance method. In this regard, the Iranian islands of Nakhilu and Jabrin were given full effect in the location of points 2 and 3 because the islands are within Iran's straight baselines (and are marginally more than 3nm off the coast of the Iranian mainland).<sup>534</sup> The Bahraini island of Jazirat Al-Muharraq which is connected to Bahrain by means of a causeway seems to have been considered as part of Bahrain's mainland for the purposes of drawing the line.<sup>535</sup> Iran's claims to straight baselines did not have an impact on the location of points 2 and 3.<sup>536</sup> This is because they are within Iran's 12nm territorial sea, albeit that territorial sea is measured partly from straight baselines according to Iran's national legislation.

The eastern terminus of the Iran-Bahrain boundary, like the western terminus of the Iran-Qatar 1969 boundary, was left undetermined pending delimitation of the Bahrain-Qatar continental shelf boundary.<sup>537</sup>

Article 2 is the same as Article 2 of Iran-Qatar agreement 1969. It deals with the possible situation arising at a point in time after this agreement comes into force, of a single oil field or other mineral deposit being found to straddle the agreed boundary line, and part of that oil field or deposit which is situated on one side of the

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<sup>531</sup> Charney and Alexander, Vol. II (1993), p. 1481, and see also *Limits in the Seas*, No. 58 (1974), p. 4 where it is also stated that the northeasterly extension of the boundary line agreed in the Bahrain-Saudi Arabia 1958 agreement terminates in this tripoint.

<sup>532</sup> The eastern terminal point is approximately 10nm closer to Iran, and the western terminal point is approximately 5nm closer to Iran. See Charney and Alexander Vol. II (1993), p. 1481.

<sup>533</sup> See *Limits in the Seas*, No. 58 (1974), p. 3. The observation is phrased as an assumption because distance measurements on a hydrographic chart show that point 2 is one-half nautical mile closer to Iran than Bahrain and point 3 is 1.25nm nearer to Iran; it is said that the reason for these discrepancies may be the scale of the hydrographic chart, see *ibid.*, p.4.

<sup>534</sup> See Charney and Alexander, Vol. II (1993), p. 1483.

<sup>535</sup> *Ibid.*, p. 1483.

<sup>536</sup> *Ibid.*, p. 1483.

<sup>537</sup> Both these terminal points in these two agreements are located on a defined azimuth but left undetermined. See Charney and Alexander, Vol. II (1993), p. 1482.

boundary can be exploited by directional drilling from the other side of the boundary. In that situation, it is clearly stated in Article 2(a) that no well shall be drilled on either side of the boundary so that any producing section of it is less than 125 metres from the boundary, except by mutual agreement between both states. Further, Article 2(b) provides that both states shall endeavour to agree as to the manner in which operations on both sides of the boundary could be co-ordinated or unitized. Both Parties had granted offshore concessions prior to this agreement, although it cannot be said that economic considerations actively influenced the position of the boundary line.

It is notable that Article 4 of the agreement confirms that the superjacent waters or airspace above any part of the continental shelf are not affected by this agreement.

**10.        1974        Iran - Oman <sup>538</sup>**

(signed 25 Jul 1974, entered into force 28 May 1975).

This agreement delimits the continental shelf in the eastern part of the Gulf and the Strait of Hormuz, as well as in the Gulf of Oman, between states which have coastlines opposite to each other. A section of the boundary in the Gulf of Oman is yet to be agreed upon.<sup>539</sup> The agreed boundary line is approximately 124.85nm long.<sup>540</sup>

The Preamble refers to the desire to establish a boundary in a “just, equitable and precise manner”, “in accordance with international law” with no reference to any specific method of delimitation. However, the boundary is in essence an equidistance line except for the part of it, at points 9 and 10, which follows the 12nm arcs of territorial sea drawn from the island of Larak.<sup>541</sup> Article 1 sets out 22 points

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<sup>538</sup> Text published at 19 (1980) U.N. Leg. Ser. 450, and *Limits in the Seas*, No. 67, “Continental Shelf Boundary: Iran-Oman” (Office of the Geographer, US, January 1, 1976) pp. 2-4. For text of agreement and map of boundary line see Appendix, pp. 323-7.

<sup>539</sup> *Limits in the Seas*, No. 94 (1981), p. 4.

<sup>540</sup> *Limits in the Seas*, No. 67 (1976), p. 4.

<sup>541</sup> *Limits in the Seas*, No. 94 (1981), p. 5.

established by geographical co-ordinates and joined by geodetic lines. Points 1 and 22, the terminal points, the most western and most southern points of the line respectively, are fixed with reference to the boundary lines between Oman and Ras Al Khaimah, and Oman and Sharjah respectively. These have not yet been agreed.

Out of the 22 points, it is apparent that 7 are equidistant from one point on each coast, namely points 3,4,9,10,14, 15, 16, while the other turning points are closer to one state than the other.<sup>542</sup> The line is therefore essentially an equidistance line, although it is not a strict equidistance line, there being some deviations.

It is a particular feature of the coastlines in question that there are a number of islands in their vicinity, along the northern coast of Oman as well as along Iran's coastline. These islands are also in the vicinity of the boundary line. They are not referred to in the agreement. It was agreed by both Parties that a number of small islands and islets were to be ignored in drawing the partly median line. However, some islands, islets and low-tide elevations were taken into account, for example, the island of Qeshm, which is very close to the Iranian mainland, and is the largest Iranian island in the Gulf, being 110km in length, with a maximum width of 35km, situated in the entrance of the Gulf.<sup>543</sup> Iran's island of Larak was also given a 12nm territorial sea, causing the line to deviate from a true median line, towards Oman, between points 9 and 10. With regard to Oman's islands, there is a straight baseline connecting islands close to its mainland, namely Al-Ghanam, Al-Fayyarin, Lima, Great Quoin, Gap, and Musandam. They were treated as part of the mainland for the purpose of drawing the boundary line.<sup>544</sup> Although both states have claimed elaborate systems of straight baselines as set out in Chapter 4, these claims do not seem to have had a material effect on the boundary.<sup>545</sup>

Article 2 is the same as Article 2 of the 1969 Iran-Qatar and 1971 Bahrain-Iran agreements. Article 4 states, as did Article 4 of Bahrain-Iran 1971, that nothing in

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<sup>542</sup> *Limits in the Seas*, No. 67 (1976), p.5.

<sup>543</sup> Razavi (1997), p. 182, n. 227.

<sup>544</sup> *Limits in the Seas*, No. 67 (1976), pp. 5-6. According to L. Legault and B. Hankey, "Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation", in Charney, and Alexander, Vol I (1993), pp. 203-241, at p. 209, the island of Umm al Fayarin was given half effect for turning point 19, but was ignored for turning point 18.

<sup>545</sup> Charney and Alexander, Vol. II (1992) p. 1505.

this agreement shall affect the status of the superjacent waters above any part of the continental shelf.

It is to be noted that the IMCO (Intergovernmental Maritime Consultative Organization) Strait of Hormuz traffic separation lanes were placed on Oman's side of the boundary, and the water depths in the region of the boundary range between 30 and 55 fathoms (180-330 feet).<sup>546</sup>

A motivation for entering into this agreement was economic in that the desire was to provide stability for future oil exploration. It is of note that significant discoveries of oil and gas were made at Henjam in the Strait of Hormuz not long after this agreement was reached.<sup>547</sup> However, economic considerations did not particularly influence the position of the boundary line, the line as agreed being essentially an equidistance line. Further, a desire to ensure security in the Strait of Hormuz was another motivation for entering into this agreement, and prior to signing it, both states issued a joint communiqué which stated a desire for agreements which had as their goal both regional stability and freedom of passage through the Strait of Hormuz.<sup>548</sup>

#### **11. 1974 Saudi Arabia – UAE**<sup>549</sup>

(Signed 21 August 1974, entered into force on same date).

This agreement remained unpublished until 1994 when Saudi Arabia registered it with the Secretariat of the UN pursuant to Article 102 of the Charter of the United Nations. It delimited the land boundary between the states. Article 5(1) states that the UAE recognizes the sovereignty of Saudi Arabia over Huwaysat Island, and Saudi Arabia recognises the UAE's sovereignty over all the other islands opposite its coast in the Gulf. With regard to continental shelf delimitation, this agreement is different from the other agreements examined in this chapter, in that it only provides for the

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<sup>546</sup> *Limits in the Seas*, No. 94 (1981), p. 5.

<sup>547</sup> Charney and Alexander, Vol. II, p. 1504.

<sup>548</sup> *Ibid.*, p.1504.

<sup>549</sup> United Nations Treaty Series Vol. 1733 I-30250. For the text of the agreement and Exchange of Letters, see Appendix pp. 331-37.

offshore boundary between the Parties to be delimited by way of further agreement.

Article 5(3) provides that this is to be done:

on such a basis of equity as will ensure free and direct access to the high seas from the territorial waters of that part of the territory of the Kingdom of Saudi Arabia adjacent to the territory of the United Arab Emirates and from the territorial waters of Huwaysat island...and in such manner as to take account of suitability for deep-water navigation between the high seas and that part of the territory of the Kingdom of Saudi Arabia indicated above. The High Contracting Parties shall have joint sovereignty over the entire area linking the territorial waters of the Kingdom of Saudi Arabia and the high seas, in accordance with the provisions of this paragraph.

No more is said in relation to the basis upon which the agreed delimitation is to occur.<sup>550</sup> It is apparent from Article 5(3) and a cursory look at the part of the coastline of Saudi Arabia sandwiched in between that of Qatar to the west and the UAE in the east, that Saudi Arabia's territorial sea would be blocked by the UAE's maritime zones, and therefore the joint sovereignty zone would afford navigational rights to Saudi Arabia to enable its vessels to have direct access to deep waters in the middle of the Gulf. Although the provision above refers to "the high seas", there are no high seas in the Gulf, and the reference can only be to the waters beyond the Parties' territorial seas, for example the EFZ of Saudi Arabia which it claimed in 1974. Thus it is envisaged that navigational interests will play a large part in influencing the location of the boundary line.

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<sup>550</sup> No further agreement on delimitation has taken place to the knowledge of the author. The agreement has been beset by issues between the Parties, in particular, the UAE has expressed dissatisfaction with the agreement over a number of years since it was signed. For example, following Saudi Arabia's registration of the agreement with the UN in 1994, the UAE registered a statement on 20 April 1994 with the UN stating that since 1975 the UAE has repeatedly notified Saudi Arabia that the agreement conflicts with two agreements between Abu Dhabi and Oman in 1959 and 1960 delimiting the territorial boundary between them. Once these points of conflict were eliminated by the territorial boundary agreement between Saudi Arabia and Oman on 21 March 1990, the UAE has desired the 1974 agreement to be amended to bring it in line with the 1990 agreement. The UAE's statement is published at United Nations Treaty Series Vol. 1774, A-30250.



**12.        1974        Iran – UAE (Dubai) <sup>551</sup>**

(signed 31 Aug 1974, ratified 15 March 1975 by Iran only)

Unlike Iran, the UAE has not yet ratified this agreement. <sup>552</sup> Therefore it is not in force between the Parties.

The continental shelf boundary line as agreed is 39.25nm in length.<sup>553</sup> It is made up of five points, with points 1 and 5 being the terminal points. As a feature of delimitation agreements involving Iran, the Preamble states that the desire is to establish a boundary in a “just, equitable and precise manner”, and “in accordance with international law”. The boundary seems to be equidistant from each mainland coast, ignoring islands. <sup>554</sup> Between points 3-4 the shelf boundary coincides with the 12nm arc drawn from the Iranian island of Sirri. Thus it is semi-enclaved.

Article 2 of the Iran-UAE (Dubai) 1974 draft agreement contains the same provision as Iran-Qatar 1969, Bahrain-Iran 1971, and Iran-Oman 1974 with regard to any future oil or gas field being discovered to be straddling the boundary. Article 4 is in the same terms as Article 4 of Bahrain-Iran 1971 and Iran-Oman 1974 in making clear that the agreement does not affect the superjacent waters or airspace above the continental shelf.

The starting point of the intended boundary depends upon the point of intersection with the Abu Dhabi-Dubai boundary. <sup>555</sup> The boundary is only one segment of the boundary between Iran and UAE which is yet to be fully delineated. However, the problem with extending to the east is the dispute between Iran and UAE

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<sup>551</sup> Published in *Limits in the Seas*, No. 63, “Continental Shelf Boundary: Iran-United Arab Emirates (Dubai)” (Office of the Geographer, US, September 30, 1975), pp. 2-3. For text of the agreement and map see Appendix, pp.328-30.

<sup>552</sup> *Limits in the Seas*, No 63 (1975), p. 2.

<sup>553</sup> *Ibid.*, p. 3.

<sup>554</sup> See Charney and Alexander, Vol. II (1993), p. 1533, Razavi (1997), p.156 and El-Hakim (1979), p. 103. It is of note that *Limits in the Seas*, No. 63 (1975) states at p.3 that “[t]he boundary is not based on the equidistance principle; from four of the five turning or terminal points the boundary is nearer to the Iranian Island of Sirri than to any UAE territory.” However, in *Limits in the Seas*, No. 94 (1981), p.8 it is stated that the boundary “appears to be equidistant from the respective mainlands and ignores the influence of islands”.

<sup>555</sup> Bundy, R.R., “Maritime delimitation in the Gulf”, in Schofield, R. ed., *Territorial foundations of the Gulf States* (UCL Press, 1994), pp. 176-186, at p. 183.

over the islands of Abu Musa and the Greater and Lesser Tunbs.<sup>556</sup> The island of Abu Musa, closest to points 3, 4, and 5, and remains in dispute between Iran and Sharjah.<sup>557</sup>

Economic considerations were a motivation for drafting the agreement although they did not play a part in the location of the line.<sup>558</sup>

### **13. 1981 Dubai - Sharjah**<sup>559</sup>

(Arbitration)

The Emirates of Dubai and Sharjah are adjacent to each other along a more or less straight coastline. While the Arbitral Tribunal decided upon both land and maritime boundaries between them, only the aspects of the Award relating to the maritime boundaries will be considered here.

In their arguments before the Tribunal both Dubai and Sharjah invoked equitable principles, although they differed as to how they might be applied. It is of interest that both Parties agreed that international law was applicable to their dispute.<sup>560</sup> They also both argued that according to customary international law, an equidistance line was appropriate, although they presented different arguments as to how this should be drawn.<sup>561</sup> There were two interesting aspects of the case which had a material effect upon the decision. Firstly, although the coastline was more or less straight, Dubai had harbour works which extended seawards three times farther than Sharjah's. Dubai referred to Articles 3 and 8 CSC 1958 as part of the arguments that the outer-most harbour works of both Dubai and Sharjah should be used as basepoints for drawing an equidistance line.<sup>562</sup> The effect of this would be to move the line further towards Sharjah giving Dubai a larger area. Sharjah argued that this was inequitable. The

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<sup>556</sup> For a view of how the boundary relates to other boundaries in its vicinity, see map of all boundaries in the Gulf as at July 1981, Appendix, p. 350.

<sup>557</sup> *Limits in the Seas*, No. 63 (1975), p. 4.

<sup>558</sup> Charney and Alexander state that subsequent to the agreement, several oil platforms were constructed in the vicinity of the boundary. See Vol. II (1993), p. 1534.

<sup>559</sup> Dubai/Sharjah Border Arbitration, Arbitral Award of 19 October 1981. The award remained unpublished until 1993, see (1993) 91 ILR 543. For map of the line drawn see Appendix, p. 351.

<sup>560</sup> *Ibid.*, p. 586. The Tribunal agreed at p. 587.

<sup>561</sup> See *ibid.*, pp. 555 and 557.

<sup>562</sup> *Ibid.*, p. 555. These provisions are referred to in Chapter 2.

second interesting aspect was how the island of Abu Musa was dealt with. There is a continuing territorial dispute over Abu Musa between Sharjah and Iran, although the Parties have come to a special agreement over the island.<sup>563</sup> Abu Musa lies approximately 35 miles off the coast of Sharjah. Sharjah claimed half-effect for it.<sup>564</sup> However, the effect of such a claim would cause the equidistance line to cut across the front of Dubai's coast. Dubai argued that there was a territorial dispute over Abu Musa between Sharjah and Iran, and that the use of half-effect was therefore inappropriate. Further, the resulting line would breach the principle of "non-encroachment" enshrined in the *North Sea Continental Shelf* (1969) cases. Dubai also argued that since 1964 it had been agreed between Sharjah, the UK, and Umm al Qaywayn that Abu Musa would only have a 3 mile territorial sea, and therefore on that basis, the island would have no effect on the equidistance line, so the equidistance line could be drawn without taking it into effect. Dubai also argued that the line produced by giving Abu Musa half effect would be incompatible with the UAE-Iran 1974 Agreement.<sup>565</sup>

The Tribunal stated that it took into account customary international law, and developments in UNCLOS III up to the date of August 1980, as well as state practice in the Gulf region as well and elsewhere. It sought to ensure the boundary line conformed with equitable principles, and produced a result which "allows, in equity, a proportionate influence to the existence of "special circumstances" or "special and unusual features" which call for special treatment."<sup>566</sup> The Tribunal held that both state practice and conventional law promoted the using of harbour works for the definition of an equidistance line, and allowing this, although more favourable to Dubai, was not inequitable.<sup>567</sup> The Tribunal also decided that the appropriate method of delimitation

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<sup>563</sup> This is the "Memorandum of Understanding" between Iran and Sharjah of November 1971, which is reproduced in A.A. El-Hakim, *The Middle Eastern States and the Law of the Sea* (Manchester University Press, Manchester, 1979) at Appendix VII, p. 208. In this agreement, both States announced that neither will renounce its claim to Abu Musa or recognise the other's claim. When the UK withdrew from the Gulf, Sharjah and Umm al Qaywayn divided the ownership of the petroleum resources of Abu Musa between them. As a result of the Memorandum, Iran obtained a 50% share in the resources of the Mubarak field, Sharjah obtained 35%, and Umm al Qaywayn the remainder. Exploitation of the island's petroleum resources was to be conducted under existing arrangements, with an agreed share of government oil revenues. Both Parties also agreed, *inter alia* to recognise a 12nm territorial sea around the island and equal fishing rights. See *Joint Development of Offshore Oil and Gas. A Model Agreement for States for Joint Development with Explanatory Commentary* Vol I (British Institute of International and Comparative Law, 1989), p. 56.

<sup>564</sup> P. 557.

<sup>565</sup> See the 'summary' at p.546.

<sup>566</sup> P. 654.

<sup>567</sup> Pp. 655-63.

was equidistance, and the only “special circumstance” was the island of Abu Musa. The Tribunal held that to give Abu Musa half-effect would be disproportionate and inequitable. Abu Musa was entitled to a 12nm territorial sea and therefore the equitable boundary was an equidistance line which at the point at which it met the 12nm territorial sea of Abu Musa, would follow the arc of the territorial sea around Abu Musa and the low tide elevations in its vicinity, until the line intersects the boundary between Iran and the UAE<sup>568</sup> As in the Sharjah – Umm Al Qaywayn boundary, the island of Abu Musa which is approximately 35nm offshore, and which is in dispute between Sharjah and Iran, added complexity to the boundary situation. Abu Musa which was treated as the territory of Sharjah for the purpose of the Arbitration, was given a 12nm belt in a semi-enclaving effect.

**14. 2000 Saudi Arabia – Kuwait**<sup>569</sup>

(Signed 2 July 2000, in force 30 January 2001).

This agreement concerned delimitation of the offshore areas of the Neutral Zone off the coast from the Partitioned Zone (the land part of the Neutral Zone), which as seen above, was divided by agreement between the Parties, which are adjacent to each other, in 1965. The maritime area which is offshore from the Partitioned Zone had for many years been exploited for the production of petroleum. However, except for its southern boundary which was agreed in 1963 and which divided the Offshore Neutral Zone from Saudi Arabia’s offshore area, the other boundaries of the Offshore Neutral Zone were not resolved.<sup>570</sup> As has been seen already, it was also agreed prior

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<sup>568</sup> Pp. 673-8.

<sup>569</sup> Published at 46 (2001) *LOS*, pp. 84-6. For text of agreement and map see Appendix, pp. 338-41.

<sup>570</sup> Charney and Alexander, Vol. IV (2002), p. 2825. The resolution of the southern limit was dealt with prior to the Saudi Arabia-Iran 1968 continental shelf agreement. Resolution of the southern limit was motivated by the discovery of the Safanya oil field offshore from Saudi Arabia, and the need to define the northern limit to which Aramco would conduct operations on the Saudi continental shelf, and the southern limit of the Offshore Neutral Zone where the Arabian Oil Company consortium would operate. See Charney and Alexander, Vol. IV (2002), p. 2827.

to this agreement, that the resources of the Neutral Zone and the Offshore Neutral Zone were owned in common.

Article 1 establishes a line which divides the Offshore Neutral Zone into two sections. Article 2 establishes a northern boundary which reflects past Saudi positions as to its location, and Article 3 then adjusts the northern boundary so that it reflects Kuwaiti positions.<sup>571</sup> Annex 1 of the agreement states that the natural resources in the continental shelf adjacent to the divided zone shall be owned in common, including the islands of Qaruh and Umm al-Maradim which are within the Offshore Neutral Zone.

In general the lines established by the agreement are based on equidistance, but in some parts they are simplified equidistance lines, and in other part are equidistant lines from only selected basepoints. The low-water line along the mainland is the baseline. In general, small offshore islands have been ignored. For example the Kuwaiti islands of Kubbar, located outside the Offshore Neutral Zone, would potentially have an effect on any equidistance line used for the northern limit, and Qaru and Umm al-Maradim could affect an equidistance line used for the line partitioning the Offshore Neutral Zone. However, they have been disregarded as basepoints for the purposes of equidistance, as have low-tide elevations.<sup>572</sup> Looking at the southern limit line which was established in 1963, it is an approximate simplified equidistance line, based on the low-water line, utilising neither islands nor low-tide elevations as basepoints.<sup>573</sup>

However, in the 2000 agreement, Kuwait's Failaka island was used as a basepoint for equidistance. The circumstance of how Failaka island was dealt with is of interest. Kuwait's position was that it should be used as a basepoint, but Saudi Arabia rejected this. This dispute was an obstacle to reaching an overall agreement. Rather than solving this dispute by granting Falaika only half-effect, the resolution of this dispute was that the northern limit was established by using Failaka as a basepoint (see Article 3), in accordance with Kuwait's position, but pursuant to Article 2 and the Annex, Saudi Arabia has an equal share in the resources in the

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<sup>571</sup> Charney and Alexander, Vol. IV (2002), p. 2829. See map at Appendix, p. 341 for the three separate lines referred to in the agreement.

<sup>572</sup> Charney and Alexander, Vol. IV (2002), p. 2830.

<sup>573</sup> *Ibid.*, p. 2832.

northern area, with a northern limit created without using Failaka as a basepoint.<sup>574</sup> The area between the line not using Failaka as a basepoint (Article 2) and the line using Failaka (Article 3) is outside the Offshore Neutral Zone, but it is included in the arrangements for sharing resources.<sup>575</sup>

The agreement grants sovereignty of the islands of Qaru and Umm al-Maradim to Kuwait, and the line which divides the Offshore Neutral Zone places them on Kuwait's side of the line. The southern limit of the Offshore Neutral Zone ties on to the northern end of the Iran-Saudi Arabia 1968 boundary.

It is clear that economic considerations were the motivating factor in finalising this agreement, although they did not influence the actual position of the line. The agreement is of significance, because it opens the way for delimitation between Iran and the Offshore Neutral Zone, and possibly even between Iran and Kuwait, whose maritime boundary is still undefined.<sup>576</sup>

**15. 2001 Qatar v Bahrain<sup>577</sup>**  
(Judgment of the ICJ)

The geographical features of the vicinity of the states of Qatar and Bahrain merits some consideration. Bahrain is an island state and Qatar constitutes a peninsula east of Bahrain. Qatar and Bahrain's relationship may be characterised as one which involves both oppositeness and adjacency. The ICJ determined a number of questions of

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<sup>574</sup> *Ibid.*, p. 2830, where the point is also made that Iran's Kharg island, which of course has not had any effect on the boundary line, is a feature which Iran is likely to wish to be given effect to in a similar way to Failaka, in any delimitation between Iran and the Offshore Neutral Zone, or between Iran and Kuwait. It is suggested at p. 2831 that this likely position to be taken by Iran is a reason why half-effect was not given to Failaka, with the resource-sharing arrangement being utilised instead.

<sup>575</sup> *Ibid.*, p. 2831.

<sup>576</sup> Iran has protested against the agreement, stating, *inter alia*, that Article 1 of the agreement "grossly and unjustly extends that line towards point 4 and, as a consequence, encroaches the natural prolongation of the continental shelf of the Islamic Republic of Iran in the respective area". See note verbale dated 23 January 2002 from the Ministry of Foreign Affairs of Iran to the Embassies of Saudi Arabia and Kuwait at Tehran, 49 *LOS* 2002 pp.68-69.

<sup>577</sup> [2001] ICJ Rep 40. For map showing the line drawn by the ICJ, as well as the geographical features referred to in this section, see Appendix, p. 352.

territorial sovereignty between the Parties, as well as determining the maritime boundary between them.

The territorial disputes are not dealt in any detail here. However, in summary, there were three main points of contention. In between Bahrain and Qatar, and sometimes within 1nm of the western Qatari mainland, are the Hawar Islands which were in dispute between the Parties. The ICJ awarded them to Bahrain. Another area of territorial dispute was an area in the northwest of the Qatari mainland known as Zubarah. This was awarded to Qatar. Janan Island and Hadd Janan, a small uninhabited island and shoal south of the Hawar islands was awarded to Qatar.

The ICJ drew a single maritime boundary made up of 42 points delimiting the Parties' territorial seas, continental shelf and EEZs. Bahrain had ratified LOSC 1982 while Qatar had not. Therefore, customary international law was applicable, and both Parties agreed that most of the provisions of the 1982 Convention which were relevant for the case reflected customary law.<sup>578</sup> Further, the ICJ observed that the concept of a single maritime boundary does not stem from conventional law, but from state practice.<sup>579</sup>

The boundary was divided into two sectors, the northern and southern sectors. The southern sector is where the coasts were seen as opposite each other, and not more than 24nm from each other. The northern sector is where the coasts were comparable to those of adjacent states, extending towards the open waters of the Gulf and beyond the overlapping territorial seas of the states. The ICJ referred to the line which it drew as an "adjusted equidistant line".<sup>580</sup> In the vicinity of the boundary are a number of small islands and low-tide elevations and the manner in which the ICJ dealt with islands and low-tide elevations is of particular interest in the case.<sup>581</sup>

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<sup>578</sup> Para. 167. Although the Judgment does not articulate which, these would undoubtedly include Articles 15 (delimitation of the territorial sea), 74(1) and 83(1) (delimitation of the EEZ and continental shelf respectively).

<sup>579</sup> Para. 173.

<sup>580</sup> For example at para. 220.

<sup>581</sup> In J.I. Charney and R.W. Smith R.W. (eds.), *International Maritime Boundaries* Vol. IV, (Martinus Nijhoff, The Hague, 2002), at p. 2842 it is stated that "For many of these features, there is a question whether they are in fact islands or free-standing low-tide elevations. For example, British and US nautical charts differ in a number of instances. It is not clear what data the Court used for its determinations."

a. The southern sector

In this sector the distance between the coastlines of both states was not more than 24nm and consisted exclusively of the territorial seas of both Parties which partially overlapped.<sup>582</sup> Therefore the delimitation was exclusively of the territorial sea boundary between the opposite coastlines of the states.

In applying the customary international law of delimitation of the territorial sea, the ICJ also took into account that its ultimate task was to draw a single maritime boundary that serves other purposes as well.<sup>583</sup> The ICJ noted that both Parties agreed that Article 15 LOSC 1982 governing delimitation of the territorial sea was part of customary international law.<sup>584</sup> The ICJ stated that:

The most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances.<sup>585</sup>

The ICJ reiterated the general principle that the equidistance line would be every point of which is equidistant from the nearest point on the baselines from which the breadth of the territorial sea is measured. In considering the baselines, it was of relevance to the ICJ that neither Qatar nor Bahrain had specified the baselines to be used to establish the breadth of their territorial seas by way of official charts, nor had they published straight baselines.<sup>586</sup> Only during the proceedings did they provide the ICJ with approximate basepoints which in their view could be used for the determination of the maritime boundary.

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<sup>582</sup> See para. 169. As set out in Chapter 4, by a Decree of 16 April 1992, Qatar established the breadth of its territorial sea to be 12nm; Bahrain did likewise by a Decree of 20 April 1993.

<sup>583</sup> Para. 174.

<sup>584</sup> Para. 175.

<sup>585</sup> Para. 176.

<sup>586</sup> Para. 177. For example, if a state wishes to claim a straight baseline system, it is to publish charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations pursuant to Article 16(2) LOSC 1982.



Qatar argued that the ICJ should determine the equidistance line using the “mainland-to-mainland method”, this method applying to firstly the Qatari peninsula, which should be understood as including the main Hawar Island, and secondly to Bahrain, of which the islands to be taken into consideration were al-Awal (also called Bahrain Island), together with al-Muharraq and Sitrah. Qatar’s method would take no account of the islands (except for the abovementioned islands, Hawar on the Qatar side and al-Awal, al-Muharraq and Sitrah on the Bahrain side), islets, rocks, reefs or low-tide elevations lying in the relevant area. The ICJ stated that according to Qatar, the delimitation area contains “[a] multitude of island, rock, coral or sand formations”. These features are said to be of little significance “because of their small size, their location and in the case of the low-tide elevations, their legal characterization”. Qatar submitted that the majority of these features are very small, uninhabited islands, or even simply rocks that are quite uninhabitable, and correspond in reality to what are often referred to in international case law as “minor geographical features”.<sup>587</sup> Qatar also submitted that the application of the mainland-to-mainland method of calculation would mean that the equidistance line had to be constructed by reference to the high-water line.

Bahrain argued that it is an archipelagic state pursuant to Part IV of LOSC 1982 and therefore entitled to draw the baselines of Article 47, namely “straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago.” In rejecting this claim the ICJ observed that Bahrain had not made this claim one of its formal submissions.<sup>588</sup> Further, in a later part of the Judgment, the ICJ rejected Bahrain’s submission that it was entitled to claim straight baselines, on the basis that the maritime features off the coast of the main islands may be assimilated to a fringe of islands which constitute a whole with the mainland.<sup>589</sup> The ICJ stated the requirements as contained in Article 4 TSCZ 1958 or Article 7 LOSC1982 are not met in that there was no fringe of islands, the islands concerned being relatively small in number. Moreover, the ICJ stated that it was only possible to speak of a “cluster of islands” or an “island system” if Bahrain’s main islands were included in that concept. In such a situation, the method of straight baselines was applicable only if the State

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<sup>587</sup> Para. 179.

<sup>588</sup> Para. 183

<sup>589</sup> Para. 214.

has declared itself to be an archipelagic State under Part IV of LOSC 1982. The ICJ concluded that Bahrain was not entitled to apply the method of straight baselines.<sup>590</sup>

The ICJ therefore ignored both Parties' submissions on the issue of the pertinent basepoints from which to draw the equidistance line and decided that the low-water line would be used, which is the normal baseline pursuant to the general rule in Article 5 LOSC 1982.<sup>591</sup> As a result, in all cases where the ICJ used a basepoint, including, for example, islands, it used the low-water line to identify the basepoint.<sup>592</sup>

With regard to islands, with one exception in the form of Qit'at Jaradah, the ICJ gave full effect to all islands, regardless of how small they were.<sup>593</sup> Qit'at Jaradah, a small uninhabited Bahraini island within the Parties' overlapping territorial seas, was determined by the ICJ to be under Bahrain's sovereignty, but was not used as a basepoint.<sup>594</sup> This was on the basis that if it was used as a basepoint

a disproportionate effect would be given to an insignificant maritime feature... The Court thus finds that there is a special circumstance in this case warranting the choice of a delimitation line passing immediately to the east of Qit'at Jaradah.<sup>595</sup>

The ICJ stated that when a low-tide elevation is situated in the overlapping area of the territorial sea of two States, whether with opposite or with adjacent coastlines, both states in principle are entitled to use the low-water line of the low-tide elevation for the measuring of the breadth of their territorial seas. The same low-tide elevation then forms part of the coastal configuration of the two States. That is so even if the low-tide elevation is nearer to the coast of one State than that of the other, or nearer to an island belonging to one party than it is to the mainland coast of the other. However, the ICJ did not use low-tide elevations located within the areas of overlapping 12nm territorial

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<sup>590</sup> Paras. 214-5.

<sup>591</sup> Para. 184.

<sup>592</sup> Charney and Smith, Vol IV (2002), p. 2847.

<sup>593</sup> *Ibid.*, p. 2848. This statement is subject to one qualification in that while the ICJ decided that the feature known as Umm Jalid, south of Fasht al Azm was a Bahraini island, and would therefore qualify as a Bahraini basepoint for the equidistance line, in the final delimitation, the potential influence of Umm Jalid on the equidistance line was superseded by special circumstances related to Fasht al Azm, and it was not utilized as a basepoint; see *ibid.*, at p. 2848.

<sup>594</sup> *Ibid.*, p. 2843.

<sup>595</sup> Para. 219.

seas as basepoints.<sup>596</sup> In this particular case, it was found that the competing rights derived by both states from the relevant provisions of the law of the sea would by necessity seem to neutralize each other.<sup>597</sup>

b. The northern sector

In this sector, the ICJ delimited the continental shelf and EEZ boundary between the two states by way of a single maritime boundary. The ICJ referred to the approach taken in *Greenland v Jan Mayen* (1993), in which the ICJ was also asked to draw a single maritime boundary. In that earlier case, the ICJ referred to *Gulf of Maine* (1984) and *Libya/Malta* (1985) and stated that with regard to the delimitation of the continental shelf:

even if it were appropriate to apply ...customary law concerning the continental shelf as developed in the decided cases, it is in accord with precedents to begin with the median line as a provisional line and then to ask whether “special circumstances” require any adjustment or shifting of that line.<sup>598</sup>

The ICJ in *Qatar/Bahrain* also noted that in *Greenland v Jan Mayen* (1993) the ICJ came to a similar conclusion with regard to the fishery zones.<sup>599</sup> The ICJ in *Qatar/Bahrain* followed the same approach, stating that for the delimitation of the maritime zones beyond the 12nm zone it will first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line.<sup>600</sup> The ICJ further noted that the equidistance/special

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<sup>596</sup> Para. 215. There is one possible exception in the form of Fasht al Azm, an extensive area of drying shoals which extend east from the Bahrain towards Qatar; it appears that for point 33 of the boundary, this feature was used as a basepoint; see Charney and Smith, Vol IV (2002), pp. 2843 and 2847. Another point of interest identified in Charney and Smith, Vol IV (2002) at p. 2848 is al-Hul, a Bahraini feature which is approximately 4nm long and south of Ras al Barr on al- Awal. It was given effect, however it does not fall within the overlapping territorial seas and it is not clear whether it is a low-tide elevation (as shown by US charts) or an island (British charts indicate that a small part of it dries at high tide).

<sup>597</sup> Para. 202.

<sup>598</sup> *Greenland and Jan Mayen* (1993), para. 51. The term “special circumstances” was taken from Article 6 CSC 1958, which was the applicable law in the case.

<sup>599</sup> Para. 228.

<sup>600</sup> Para. 230.

circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case law and state practice in relation to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated.<sup>601</sup>

The ICJ then examined whether there were circumstances which might make it necessary to adjust the equidistance line in order to achieve an equitable result. Bahrain claimed that there were a significant number of pearling banks, many of which are situated to the north of the Qatar peninsula, which have appertained to Bahrain since time immemorial and that they constitute a special circumstance which must be taken into consideration in carrying out the delimitation, namely to shift the equidistance line eastwards. The ICJ rejected this argument, noting that the pearling industry effectively ceased to exist a considerable time ago, and that, on the basis of the evidence before it, pearl diving in the Gulf area traditionally was considered as a right which was common to the general coastal population. Moreover, even if it were established that pearling had been carried out by a group of fishermen from one state only, this activity seemed in any event never to have led to the recognition of an exclusive quasi-territorial right to the fishing grounds themselves or to the superjacent waters.<sup>602</sup>

The ICJ also rejected Qatar's submission that it should take into account a boundary line used by Britain in 1947 which neither party had previously accepted as having binding force.<sup>603</sup>

Qatar also unsuccessfully argued that the ratio of relevant coastal lengths, which it argued was 1.59:1 should be reflected, to its advantage, in the drawing of the line. However it is apparent that this argument was on the basis that the Hawar islands were under its sovereignty. The ICJ took into account the fact that it had decided that Bahrain had sovereignty over the Hawar Islands, and found that the disparity in length of the coastal fronts of the Parties could not be considered such as to necessitate an adjustment of the equidistance line.<sup>604</sup>

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<sup>601</sup> Para. 231.

<sup>602</sup> See paras. 235-7.

<sup>603</sup> Paras. 237-40.

<sup>604</sup> Paras. 241-3.

The ICJ did however find a relevant circumstance in the form of Fasht al Jarim, a low-tide elevation north of Bahrain and partially located in Bahrain's territorial sea. It decided that this "remote projection of Bahrain's coastline" should not be used as a basepoint for the equidistance line, because it would have a disproportionate effect, and that "such a distortion, due to a maritime feature located well out to sea and of which at most a minute part is above water at high tide, would not lead to an equitable solution".<sup>605</sup>

**16.        2008        Saudi Arabia – Qatar**<sup>606</sup>

(Signed 5 July 2008, in force 16 December 2008).

This agreement is in the form of Joint Minutes on the land and maritime boundaries agreed in the Qatar- Saudi Arabia 1965 agreement and resolves outstanding issues regarding those boundaries. The agreement delimits the territorial sea seaward from Khawr al-Udaid, and the waters seaward to the boundary between Iran and Qatar for approximately 115nm, and is comprised of 9 points.<sup>607</sup> It essentially establishes a 3nm wide corridor, with the northern limit of this corridor constituting the Qatar-Saudi Arabia line, and the southern limit corresponding with the Qatar-Abu Dhabi (1969) boundary, with which the Qatar -Saudi Arabia line is parallel. It is understood that the purpose of this boundary is to provide Saudi Arabia with a corridor between Qatar and the UAE to enable shipping from Saudi Arabia's territorial sea to access deep water in the centre of the Gulf north of the Qatar -Abu Dhabi boundary, without entering UAE waters.<sup>608</sup> Article 2 confirms that the resources under the seabed in this corridor remain in the ownership of Qatar. Therefore, the agreement is motivated by the furtherance of Saudi Arabia's navigational interests.<sup>609</sup>

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<sup>605</sup> Paras. 247 and 248.

<sup>606</sup> Translation published at 70 (2009) *LOS*B, pp. 45-51. For text of the agreement and map see Appendix, pp 342-9.

<sup>607</sup> D.A Colson and R.W. Smith (eds.), *International Maritime Boundaries* Vol. VI (Martinus Nijhoff, Leiden, 2011), pp. 4417, 4420.

<sup>608</sup> Colson and Smith, Vol VI (2011), pp. 4417, 4420.

<sup>609</sup> The UAE has protested against the agreement, stating, *inter alia*, that it "violates the sovereignty of the United Arab Emirates over Dayyinah Island and its territorial sea and a part of the territorial sea of Makasib Island". See Note transmitted to the Officer-in Charge of the Division for Ocean Affairs and the Law of the Sea by a letter from the Permanent Representative of the UAE to the U.N. dated 16 June 2009, translation in 70 *LOS*B (2009) p. 60.

## **General observations on the delimitation of maritime boundaries in the Gulf**

While Chapter 7 of this thesis will look at Gulf State practice as a whole in the context of international law, it is appropriate at this point to consider in general the delimitation of boundaries which have taken place in the Gulf, the majority of which have been continental shelf boundaries, and the trends which may be identified.

### **i. Equidistance**

The principle of equidistance has played a major role in delimitation in the Gulf. Most often lines are drawn according to modified equidistance rather than strict equidistance. As has been seen, some boundary lines are partly strictly equidistance, and partly modified equidistance lines. Factors which have caused the modification to equidistance have ranged from the line being drawn according to predetermined landmarks as part of an agreed position, to account being taken of islands.<sup>610</sup> drawing of the line, such as islands, islets and shoals.

Iran has been active in seeking agreements with the Arab states on the opposite side of the Gulf, and there are common trends found in Iran's Agreements with the Arab states, namely Saudi Arabia - Iran 1968, Iran - Qatar 1969, Bahrain-Iran 1971, Iran-Oman 1974, and Iran-UAE (Dubai) 1974. With the exception of Saudi Arabia-Iran 1968, the Preamble of all these agreements refers to the desire to delimit the boundary in a "just, equitable and precise manner" and "in accordance with international law". Every agreement entered into by Iran with an Arab state has been

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<sup>610</sup> The importance given to equidistance in the Gulf agreements has been observed in a general sense by some commentators in what is now somewhat dated writing. For example, S.H. Amin expressed the view a number of years ago that "[t]he median line norm has been universally applied in the Gulf for continental shelf delimitation, but frequently with modifications. Such modifications have been inevitable as a result of the obvious special circumstances which exist in the Gulf. The most important occurrences of partial departure from the median line are due to the presence of islands and the unity of deposits, as well as political, economic, and strategic considerations", see *International Legal Problems of the Gulf* (Middle East and North African Studies Press Ltd., London, 1981), at p. 143. Chapter 7 of this thesis will examine the use of the equidistance line in the bilateral agreements as well as the provision for equidistance in the Gulf national legislation, presenting a more up to date analysis in the light of present international law.

based on equidistance. This is foreseeable on the basis that the agreements are between states with opposite coastlines. The boundary lines drawn are based upon equidistance although there is no actual reference to equidistance. It is quite clear that the aim expressed in many of the agreements is to achieve an equitable solution, and in reality, this aim is effected by a modified equidistance line.

A similar approach was taken in the *Dubai/ Sharjah* Arbitration (1981). The essential reasoning behind the drawing of the boundary was that it should conform with equitable principles, and that an equidistance line was the appropriate line to take into account such equitable principles. The Tribunal also found that a special circumstance existed in the form of Abu Musa island. The decision of the ICJ in *Qatar v Bahrain* (2001) is significant in this context because it is primarily an example of the approach within recent case law of using a provisional equidistance line as a starting point, which is then adjusted, if necessary, to avoid the effect of geographical features on the equidistance line. Secondly, it restates that the aim of delimitation is to reach an “equitable solution”, which reiterates the reference to such a solution in Articles 74(1) and 83(1) LOSC 1982 on delimitation of the EEZ and continental shelf respectively.

## **ii. Islands as relevant circumstances**

It is quite clear that islands have played an important part in the considerations relating to delimitation in the Gulf, particularly because of their sheer number and position, particularly on the Arab side of the Gulf. In a number of instances they have been viewed as relevant circumstances which have had a clear effect on the equidistance line, in accordance with the techniques utilised in international case law. Thus, it is apparent that half-effect was given to Iran’s Kharg island in Saudi Arabia – Iran 1968, and in the same agreement, the Iranian islands of Nakhilu and the Saudi Arabian island of Abu Ali were also given partial effect. Another method utilised in the international law case law which was given effect to in the Gulf is the granting of an island’s territorial sea by way of a semi-enclave, for example Abu Musa was

granted a 12nm territorial sea in the *Dubai/Sharjah* Arbitration (1981) and the island of Dayyinha in Qatar – UAE (Abu Dhabi) 1969 was granted a 3nm territorial sea.

Delimitation in the Gulf however also ignores certain islands. This is consistent with trends in international case law so as not to create a disproportionate effect on an equidistance line. *Qatar v Bahrain* (2001) is an example of how the extent to whether geographical features such as islands are ignored when drawing a boundary line is case-specific and depends on the individual features of each case. The approach of the ICJ in that case was to give effect to all minor islands except one, while in other cases, such as for example, *Gulf of Maine* (1984), the ICJ highlighted the disadvantages of allowing minor geographical features including small islands to be used as basepoints. The delimitation in the Gulf shows a significant degree of pragmatism in this respect. It is also clear that in respect of the treatment of islands, the delimitation in the Gulf benefits from, and is quite consistent with, international law.

a. The existence of oil and gas fields in the continental shelf as relevant circumstances

The motivation for entering the agreements has been largely related to the need to establish boundaries for the purpose of exploration and exploitation of oil and gas fields, whether already known, and subject to disputes between the parties, or in order to prepare for future discovery of oil and gas in the vicinity of the boundary line to be agreed.

Also as seen above, Article 2 of the following agreements between Iran and Arab states: Iran - Qatar 1969, Bahrain-Iran 1971, Iran-Oman 1974 and Iran-UAE (Dubai) 1974 are identical, and are very similar to Article 4 of Saudi Arabia-Iran 1968. In anticipation of existence of oil structures across maritime boundaries, Iran decided to include a provision in her continental shelf agreements with the Arab states on the opposite side of the Gulf preventing inappropriate exploitation of such structures. According to this provision, which appears in all continental shelf boundary agreements, if a petroleum structure extends across the boundary and could



be exploited from the other side, there should be no sub-surface well completion within a set distance without the mutual agreement of the two parties. These clauses may be described as “resource deposit clauses”, which give effect to a cooperation arrangement between states where a single resource extends across a boundary, with part of the resource being exploitable from the other side of the boundary.<sup>611</sup> A well-known example of such a clause is in the UK – Norway Agreement of 10 March 1965 delimiting the continental shelf boundary between both countries.<sup>612</sup> The Gulf delimitation agreements which contain the resource deposit clause seem to be modelled on the UK – Norway 1965 agreement.<sup>613</sup> Other agreements in the Gulf incorporate joint development, which may be defined as “an agreement between two States to develop so as to share jointly in agreed proportions by inter-State cooperation and national measures the offshore oil and gas in a designated zone of the seabed and subsoil of the continental shelf to which both or either of the participating States are entitled in international law.”<sup>614</sup> Examples of joint

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<sup>611</sup> B. Kwiatkowska, “Economic and Environmental Consideration in Maritime Boundary Delimitation”, in Charney, J.I., and Alexander, L.M., (eds.), *International Maritime Boundaries* (Nijhoff, Dordrecht, 1993), Vol I, pp. 75-113, p. 86.

<sup>612</sup> “If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, including sand or gravel, extends across the dividing line and the part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in any part, from the other side of the dividing line, the Contracting Parties shall, in consultation with the licensees, if any, seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the proceeds deriving therefrom, shall be apportioned.” (Article 4), agreement published at UK Treaty Series No. 71 (1965), Cmnd 2757.

<sup>613</sup> See Kwiatkowska, Vol I (1993), p. 87.

<sup>614</sup> Definition adopted by the research team in *Joint Development of Offshore Oil and Gas. A Model Agreement for States for Joint Development with Explanatory Commentary* Vol I (British Institute of International and Comparative Law, 1989), see p. 45. This definition is based upon the definition adopted by R. Lagoni, Rapporteur to the EEZ Committee of the International Law Association; in his articles, and in his report on joint development which was adopted at the 1988 Warsaw meeting, he defined joint development as “a concept of international law based on agreement between States”, referred to in *Joint Development of Offshore Oil and Gas. A Model Agreement for States for Joint Development with Explanatory Commentary* Vol I, at p. 44. For Lagoni’s contributions, see “Oil and Gas Deposits Across National Frontiers” 73 (1979) *AJIL* 215; International Law Association Warsaw Conference (1988), International Committee on the Exclusive Economic Zone: Report on Joint Development of Non-Living Resources in the Exclusive Economic Zone (unpublished), referred to in *Joint Development of Offshore Oil and Gas. A Model Agreement for States for Joint Development with Explanatory Commentary* Vol I, at p. 52, n. 4. Thus Lagoni’s definition excludes contractual cooperation such as unitisation between licensee or concessionaires of a field straddling the dividing line between concession areas, *ibid.*, p. 44. For a discussion of an example of unitisation in the form of the UK-Norway agreement of May 1976 relating to the joint exploitation of the Frigg Gas Field in the North Sea, see Woodliffe, J.C., ‘International Unitisation of an Offshore Gas Field’, 26 *ICLQ* (1977), pp. 338-353.

development schemes in the Gulf are Bahrain -Saudi Arabia 1958 (Second Clause), Kuwait - Saudi Arabia 1965 and Qatar - UAE (Abu Dhabi) 1969 (paras. 6 and 7).<sup>615</sup>

Out of the 13 agreements examined above, four agreements may be said to have considered mineral deposits as a relevant factor having a direct impact on the position of the boundary line. These agreements are Saudi Arabia-Bahrain 1958, Abu Dhabi-Dubai 1968, Iran-Saudi Arabia 1968 and Qatar-UAE (Abu Dhabi) 1969. It is in this respect that it may be said that Gulf delimitation shows quite a blatant regard for mineral resources as highly relevant to the drawing of the delimitation line, and this is not consistent with the decisions of the ICJ and tribunals in the case law as referred to in Chapter 3 of this thesis where, it has been seen, there is an obvious reluctance to explicitly find that oil and gas resources (or indeed other resources such as fisheries) are relevant circumstances which may affect the placement of an equidistance line. As suggested in Chapter 3, such a reticence and indeed on occasion silence in the case law is despite the fact that very often the cases were in fact brought primarily because of the existence or anticipated existence of oil and gas resources in the continental shelf, and the need to obtain a third party decision on delimitation in order so that they could be legitimately exploited without dispute between the parties. In this regard, it is useful to recall *Qatar v Bahrain* (2001) where economic considerations had no explicit bearing on the ICJ's Judgment, with the ICJ making no reference to oil and gas concessions which were raised by the Parties as part of the background to the dispute. The notable absence of any reference in the judgment to these obviously crucial and pressing matters inevitably creates the impression that any express comment on their relevance is being studiously avoided.

In actively and openly allowing the oil and gas resources to be a determinative factor on the boundaries in the Gulf agreements, the Gulf States are acting innovatively in comparison with international case law. They freely express what is of real importance to them, and use delimitation to give effect to those crucial concerns.

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<sup>615</sup> See Kwiatkowska, Vol I (1993), p. 88 and *Joint Development of Offshore Oil and Gas. A Model Agreement for States for Joint Development with Explanatory Commentary* Vol I (British Institute of International and Comparative Law, 1989), pp. 54-6.

b. Navigation as a relevant circumstance

The navigational interests of Saudi Arabia were a factor directly influencing the position of the boundary line in Saudi Arabia - Qatar 2008, with the boundary drawn so as to allow Saudi Arabia the passage of ships from its territorial sea to access deep water in the centre of the Gulf via a corridor between Qatar and the UAE, without entering the UAE's territorial sea. The agreement confirms that the resources under the seabed in this corridor remain in Qatar's ownership. The importance of navigational interests for Saudi Arabia which is apparent in this boundary with Qatar is reminiscent of the Saudi Arabia – UAE 1974 agreement in which the continental shelf boundary lying offshore the short part of Saudi Arabia's coastline in between Qatar to the west and the UAE to the east, was envisaged to be agreed upon in the future so as to allow Saudi Arabia "free and direct access to the high seas" from its territorial waters to the deep waters in the Gulf, allowing Saudi Arabia the opportunity for deep-water navigation.

As discussed in Chapter 3 of this thesis, matters of navigation have not been adjudged in the case law to be a relevant circumstance which has operated to alter the course of an equidistance line delimiting the continental shelf boundaries between states. In this regard, the delimitation agreements referred to above, go beyond the confines of international case law, and give expression to the need to protect navigational interests, which is particularly pressing in a relatively overcrowded, narrow and shallow semi-enclosed sea such as the Gulf. As such, these agreements are innovative in allowing navigation concerns to be an important factor which affects the boundary line drawn.

## **Chapter 7**

### **Delimitation of the Continental Shelf: Gulf State Practice in the context of International Law**

#### **The Gulf as a region**

The Gulf is a region in a geographical sense. It is a shallow semi-enclosed sea with particular characteristics which distinguish it from other marine areas of the world. There is no true continental shelf in the geological sense. Apart from Iraq, all the Gulf States have opposite coastlines with Iran which stretches along the whole of the northern side of the Gulf. There is a proliferation of islands along the southern Arab side of the Gulf. The sub-sea region is rich in oil and gas and the continental shelf which each State in the Gulf is entitled to claim overlaps with its neighbours. Proliferation of low tide elevations, shoals and reefs in the southern side of the Gulf.

A semi-enclosed sea is an example of a network of states bound by common interests and concerns.<sup>616</sup> Such an arrangement may additionally be a source of conflict. Due to the physical proximity of these States, the actions of one State have an immediate impact on those of the others as all are littoral States in a semi-enclosed sea.<sup>617</sup> This effect has already been set out in the preceding chapters. The promulgation of national legislation by one Gulf State has precipitated that of others. For example, as has been seen, Saudi Arabia's early legislation claiming a continental shelf was quickly followed by other Gulf States. Similarly, Saudi Arabia's legislation increasing its territorial sea limit to 12nm was followed by Iran's legislation to the same effect. Furthermore, once the breadth of Saudi Arabia's territorial sea was

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<sup>616</sup> As stated by L.M. Alexander in "Regionalism and the Law of the Sea: The Case of Semi-enclosed Seas", (1974) 2 *Ocean Development and International Law* 151, at 154, a semi-enclosed sea is one type of "complimentary-use region", the latter being based upon "mutual needs and interests resulting from geographic proximity".

<sup>617</sup> *Ibid.*, p. 155.

established, this also opened the way for the Saudi Arabia-Bahrain 1958 Agreement to be reached.

Given the interconnections of the region, and the possibilities for conflict, it is remarkable that most of the boundaries between the States have been resolved in an amicable fashion. Iran has concluded agreements with most of its Arab neighbours and the immense political and ideological differences between them have not created obstacles to such progress. It can be said that there has been a culture of agreement within the Gulf where at all possible. This is partly explicable on the basis of the pragmatic need to resolve boundaries so as to facilitate exploration and exploitation of oil and gas resources in the continental shelf and this explains why the agreements are almost all in relation to the continental shelf rather than in respect of any other zone.<sup>618</sup> As has been seen from the overview of the Gulf laws and delimitation agreements, there are also a number of common regional interests in the Gulf other than the exploration and exploitation of offshore resources. These are mainly fisheries and security interests, with some navigational interests. All these interests have in fact contributed to the law and state practice of the Gulf States.

### **Declarations of the right to exploit the continental shelf**

Saudi Arabia was the first Gulf State to declare its rights with regard to the continental shelf.<sup>619</sup> Saudi Arabia was not in the protection of Britain, and therefore was not subject to any fetter on its ability to legislate. Further, being a State with a relatively long coastline, which fronts not only the Gulf but also the Red Sea, there was the need to begin to assert its rights as soon as possible so as to add formality to any arrangements it already had with outside agencies to explore oil and gas in its continental shelf. Bahrain, Qatar, Kuwait and the Gulf Sheikhdoms followed Saudi

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<sup>618</sup> As noted by Franck in respect of the North Sea, another semi-enclosed sea, such a high degree of delimitation settlement in respect of the continental shelf in the North Sea is not matched by the delimitation of other maritime zones, and is explained by "an ad hoc co-operation between countries with a well-defined common goal: divide the area without delay in order to allow exploratory drilling." See E. Franck, "Maritime Boundaries and Regional Co-operation", (1990) 5 *International Journal of Estuarine and Coastal Law* p. 215-227 at p. 226.

<sup>619</sup> As seen in Chapter 5, Iran issued a bill of 19 May 1949 relating to the resources of the seabed, but did not promulgate its first Act on the continental shelf until 1955.

Arabia's lead (through the control of Britain) with Iran following in 1955 and Iraq in 1957, by this time, an independent state.

As seen in Chapter 5, all the Proclamations, with the exception of the legislation of Iran, refer to the subsoil and seabed in the areas contiguous to the coast rather than referring to the "continental shelf" explicitly, because of the concern at the time, which was yet to be resolved at an international level, that there was in fact no physical continental shelf in the Gulf. By the time of Iran's Act of 1955, this issue had been resolved on an international level, on the basis that there was a legal continental shelf in the Gulf for the purpose of what was to become Article 1 of CSC 1958. It is of note that Iraq's Proclamation of 1957 also did not refer to the "continental shelf" as such, although by that time, it was open to it to do so in line with international standards. However, as has been seen, Iraq declared the sole purpose of its Proclamation as being to exercise rights established by international practice, and there is nothing to suggest that Iraq was not acting in line with such practice.

It will be remembered from Chapter 5 that there is a difference between the wording in all these Proclamations and that in the Truman Proclamation in that while the latter made clear that the natural resources of the continental shelf were subject to the jurisdiction and control of the US, the Gulf legislation states that the continental shelf as well as the resources within it "belong" or "appertain" to the Gulf states. It is unlikely that this denotes any real substantive difference because any control of the resources in the continental shelf will entail control of the continental shelf itself.

Thus it may be concluded that the Gulf claims to the continental shelf were made in the context of a desire to follow the Truman Proclamation, and indeed customary law, with regard to rights in the continental shelf.

As was seen in Chapter 5, subsequent to the 1950s, further legislation was promulgated with regard to rights over the continental shelf by Oman in 1972 and 1981, Qatar in 1974, the UAE in 1993, Saudi Arabia in 2012 and Kuwait in 2014. This legislation reflects the wording contained in Article 2(1) CSC 1958 and Article 77(1) LOSC 1982 whereby it confirms that the States exercise sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. Iran however departed from such provisions by applying its provisions on

its rights in the EEZ to the continental shelf in a way not provided for by international law.

### **The safeguarding of navigation and security in the contiguous zone and EEZ**

As set out in Chapters 4 and 5 of this thesis, Saudi Arabia, Iran and the UAE have gone beyond the provisions in TSCZ 1958 and LOSC 1982 by supplementing their legislation with protection of matters relating to security and navigation in their contiguous zones and EEZs.

Thus, in its 1949 and 1958 Decrees as well as its 2012 Statute, Saudi Arabia stated that the purposes of its contiguous zone was to ensure the prevention of infringement of law relating to, *inter alia*, security and navigation. In its 1993 Act, Iran established its contiguous zone in order to take measures to prevent infringement of *inter alia*, security laws. Similarly, the UAE in its 1993 Law stated that the purpose of its contiguous zone is to exercise supervision and control to prevent infringement of, *inter alia*, its security laws.

With regard to the EEZ, in its 2012 Statute, Saudi Arabia added “security” to the list of matters which it has jurisdiction over in relation to artificial islands, installations and structures in the EEZ. It will also be recalled that in its 1993 Act, Iran provided for security zones in its EEZ, and in response to the US objection about it stated that security zones are essential in light of the installations which exist for oil exploration in its EEZ as well as for navigation.

In these respects, these Gulf States have gone beyond the limits in international law. It is of note that both Saudi Arabia in its legislation on the contiguous zone, and Iran in its response to US criticism couple both security and navigation. Indeed, they may be said to be interlinked. The significance for delimitation in the Gulf will be considered later in this chapter.

### **Delimitation of the territorial sea and the contiguous zone**

As has already been shown, the Gulf States in general have legislated for delimitation of their territorial sea by way of the median line.<sup>620</sup> In fact, delimitation of the territorial sea by way of the median line in respect of both opposite and adjacent coasts had already become customary international law by the time the Gulf States legislated in this respect. The median line to delimit the territorial sea was also provided for in Article 12 TSCZ 1958 which evolved into Article 15 LOSC 1982.

A number of the Gulf States have claimed a contiguous zone in line with international law. However, Iran, the UAE and Saudi Arabia have claimed additional jurisdiction over security matters in the zone, which is not provided for the LOSC 1982. The US has opposed such claims, a reflection of the concern of global Maritime Powers that freedom of navigation be preserved.<sup>621</sup>

While the vast majority of the Gulf agreements have been shown to be continental shelf delimitations, two Gulf agreements delimited the territorial sea boundary. The first, the Saudi Arabia–Qatar 1965 agreement, adopted the median line for the delimitation of the territorial sea, although this agreement is not yet in force. It should be noted that Qatar at the time of entering this agreement was subject to the protection of Britain, and therefore was under Britain’s influence in coming to this draft agreement. Nonetheless, it is useful to note the intended utilization of the median line in delimiting the territorial sea as reflective of TSCZ 1958 and indeed customary international law at the time. Secondly, the Saudi Arabia–Qatar 2008 agreement is somewhat different in that a territorial sea corridor was established with the northern limit of that corridor (the actual line established by the agreement), being parallel to the boundary established in the Qatar–Abu Dhabi 1969 agreement. The line drawn by the agreement is therefore not equidistant between Qatar and Saudi

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<sup>620</sup> For example, Kuwait’s 1967 Decree Article 4; Oman’s 1972 Decree, Article 7; Iran’s 1993 Act, Article 4; the UAE’s 1993 Law, Article 23(1).

<sup>621</sup> The US has opposed a number of states’ claims to jurisdiction over security matters in the contiguous zone, including those of Iran, the UAE and Saudi Arabia. See J.A Roach and R.W. Smith, *Excessive Maritime Claims* (3<sup>rd</sup> ed., Martinus Nijhoff Publishers, Leiden; Boston, 2012), at p. 157 who demonstrate that the US has protested against countries such as Egypt, India, Pakistan, and Sri Lanka amongst others, in this regard.



Arabia. Rather, it is parallel to a previous boundary which was partly based on equidistance.

### **Delimitation of the continental shelf in the Gulf**

#### **i. Baselines**

As has been demonstrated in Chapter 4 a number of Gulf States have claimed straight baselines which were not in accordance with either the Conventions on the law of the sea or case law. As such, there were departures from international law and this continued over a number of decades, for example, the Saudi legislation in 1958, the Omani legislation in 1972 and Iranian legislation in 1973 and 1993. Such departures however resulted in a number of protests, for example from the US in relation to Iran's straight baselines in its 1973 and 1993 legislation.

Despite these claims, it is of note that they have not had any effect on the continental shelf boundaries as agreed in the Gulf with the boundaries relying instead on agreed basepoints. Evans makes the point that "contentious baselines rarely influence the ultimate line", and refers to the ICJ in *Romania v Ukraine* (2009) which stated that:

[T]he issue of determining the baselines for the purpose of measuring the breadth of the continental shelf and the EEZ and the issue of identifying base points for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the EEZ between adjacent/opposite States are two different issues.<sup>622</sup>

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<sup>622</sup> Judgment [2009] ICJ Rep 62, para. 137, referred to in M.D. Evans, "Maritime Boundary Delimitation" in Rothwell, D.R., Oude Elferink, A.G., Scott, T., and Stephens, T., eds., *The Oxford Handbook of the Law of the Sea* (Oxford University Press, Oxford, 2015), p. 254 at p. 262.

## **ii. Equitable principles and equidistance**

This section summarizes Gulf state practice in the form of national legislation and bilateral agreements and considers them in the context of international law. In this regard it is useful to consider delimitation of all zones in general in order to gain a fuller contextual picture. The early Proclamations in the 1940s by Saudi Arabia, Qatar, Kuwait, and the Gulf Sheikhdoms referred to the delimitation of the boundary between their seabed and subsoil areas and those of another state as being in accordance with equitable principles and by agreement with the other state, reflecting the Truman Proclamation of 1945. Bahrain refers in its early legislation to “just” principles, although this is another way of referring to equitable principles (with Britain at this time controlling Bahrain’s legislation as it was controlling that of the other Gulf States under its protection). Similarly, but in respect of delimitation of its territorial sea, Saudi Arabia provided for this to be done in accordance with equitable principles in 1949 and 1958. In its 1955 Act, Iran provided that its continental shelf boundary shall be resolved according to “equity”, but in its 1956 legislation provided that the territorial sea boundary was to be delimited in accordance with the “recognised rules of international law”.

There was then a shift within the national legislation from the late 1950s onwards to references to equidistance. The first Gulf State to exhibit this approach was Iraq which in its Proclamation of 19 April 1958 referred to Iraq’s “adherence to international practice...and to the principle of equidistance” although there is no specific reference to delimitation of the continental shelf specifically by way of the application of the principle of equidistance. In 1959, Iran provided for delimitation of the territorial sea by the median line. In 1967, Kuwait legislated for the delimitation of its territorial sea to be in accordance with Article 12 TSCZ 1958, namely, in the absence of agreement, by way of the median line, unless there were matters of historic title or other special circumstances which militated against equidistance. Kuwait issued a note verbale of 12 July 1971 to the UN stating that although it was not a party to CSC 1958 it was aware of its provisions, and that it had adopted the median line in delimiting the boundary of its continental shelf with its neighbours.

In 1972, Oman legislated for delimitation of the territorial sea, the continental shelf and the EFZ by the median line, and again in 1977 in respect of the EFZ. In 1973, Iran legislated for the outer limit of its EFZ to be the same as the outer limit of its continental shelf where the latter was delimited by bilateral agreement with other states, otherwise where such delimitation of the continental shelf had not occurred, the EFZ was to be delimited by the equidistance line. This was also provided for by the UAE in 1980 in respect of its EEZ. Saudi Arabia legislated for delimitation of its EFZ by way of an equidistance line in 1974, as did Qatar in 1974 in respect of its EFZ and continental shelf. In 1981, Oman legislation provided for the limits of its territorial sea, EEZ and continental shelf to be delimited by the equidistance line. In 1993 Iran provided that this was the case in relation to the territorial sea unless otherwise agreed, as well as in respect of the EEZ and continental shelf, unless otherwise determined in accordance with bilateral agreements. In 1993, the UAE provided that delimitation of the territorial sea was to be by way of a median line. It also provided the same in respect of the contiguous zone in the absence of agreement. It further provided for delimitation of the EEZ and continental shelf by an equidistance line unless otherwise determined in accordance with bilateral agreements, thus reflecting the wording of Iran's Act of the same year. Most recently in 2014 Kuwait legislated that delimitation of its territorial sea, contiguous zone, EEZ and continental shelf shall be by way of an equidistance line. This most recent legislation confirms this latest trend in the Gulf. Thus the Gulf States, taken as a whole, began by referring to the delimitation of their continental shelf by way of equitable principles, and then moved, in time, to specifically referring to delimitation by way of the equidistance line in their national legislation.

In considering how far the national legislation and bilateral agreements reflect international law on continental shelf delimitation, it has already been seen that the Gulf States followed the wording of the Truman Proclamation in their early legislation. Towards the end of the 1950s, the reference to equidistance began in the national legislation, in relation to the territorial sea, the EFZ/EEZ as well as the continental shelf and this clearly coincided with the discussions regarding equidistance in UNCLOS I and which eventually became enshrined in Article 12 TSCZ 1958 and Article 6 CSC 1958. Only Saudi Arabia, Iran and Iraq attended

UNCLOS I and II.<sup>623</sup> This is because they were the only independent Gulf States at that time, and this attendance explains why Iraq and Iran expressly referred to the principle of equidistance in their legislation of 1958 and 1959 respectively. As has already been seen above in this chapter, such references were not directly in relation to delimitation of the continental shelf; the Iraqi legislation referred to equidistance in general without reference to delimitation of any specific zone, and Iran's legislation referred to delimitation of the territorial sea rather than the continental shelf by a median line. It is of note that Saudi Arabia did not promulgate similar legislation in the late 1950s. Its legislation of 1958 referred to delimitation of the territorial sea by equity, and Saudi Arabia did not update this position in the 1950s. The only Saudi legislation to specifically refer to delimitation by a median line is the 1974 law relating to delimitation of the EFZ. However, the bilateral delimitation agreements entered into by Saudi Arabia clearly demonstrate its approval of equidistance. Clearly, the remaining Gulf States, on obtaining independence, jumped on the band wagon of using the equidistance principle in relation to continental shelf delimitation. This was despite the fact that none of the Gulf States were parties to CSC 1958. All the Gulf States however participated in UNCLOS III and in general they supported the principle of equidistance as the principle governing continental shelf delimitation for both opposite and adjacent states.<sup>624</sup> While their legislation refers to equidistance in relation to delimitation of the continental shelf, it does not mirror Article 6 CSC 1958. For example, as has been seen, it does not refer to "specific circumstances".

The examination of the bilateral delimitation agreements in the Gulf in Chapter 6 demonstrates that the principle of equidistance has played a major role in delimitation, although a strict application of equidistance has often given way to a modified equidistance line. Historically, equidistance has played an important part in maritime delimitation in the Gulf, influenced by Britain when it was still in its Protective role in the region. Thus, during the 1960s, there took place a series of meetings between Britain, on behalf of the protected Gulf States, and Iran, over the

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<sup>623</sup> A. Razavi, *Continental Shelf Delimitation and Related Maritime Issues in the Persian Gulf* (Martinus Nijhoff Publishers, The Hague, 1997), pp. 19-22. Iran was the only Gulf State which attended the Hague Conference of 1930, *ibid.*, p.19.

<sup>624</sup> See, for example, A.A. El-Hakim, *The Middle Eastern States and the Law of the Sea* (Manchester University Press, Manchester, 1979), p. 63.

settlement of continental shelf boundaries between those States. The equidistance line was accepted as the basic means of delimitation.<sup>625</sup> This laid the foundation for the delimitation between Iran and the Arab states. As seen in Chapter 6, agreements between Iran and other Gulf states refer in their Preambles to a desire to delimit the boundary in a just and equitable manner. Those same agreements then utilize a modified equidistance line in order to effect the continental shelf boundary delimitation.

It should be noted at this juncture that while in general there is extensive use of a modified equidistance in the bilateral agreements in the Gulf, as these are negotiated agreements it is often very difficult to understand precisely why certain coordinates were agreed upon rather than others without any reference to any justification of law or objective principle. Further, as was set out in Chapter 3, proportionality considerations have played a major role in the international case law in relation to a consideration of the relationship between the length of the parties' coastlines and the continental shelf appertaining to the parties. However, none of the delimitation agreements makes any specific reference to proportionality and so it is difficult to ascertain the exact role which the concept of proportionality has played in the agreements.

It is also important to distinguish between law in the form of national legislation, and state practice in the form of the bilateral agreements which are *ad hoc* negotiated compromises. It is with this in mind that it is difficult to accept El-Hakim's conclusion that:

the principles followed in the agreements parallel the [CSC 1958] convention's guidelines with respect to jurisdiction and delimitation of boundary. It might even be suggested that a regional customary rule has come into existence on the three-point rule expressed in Article 6 of the Geneva convention.<sup>626</sup>

Nevertheless, it is possible to conclude that the agreements in general demonstrate the Gulf States' understanding that modified equidistance is a manifestation of a just

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<sup>625</sup> See Amin, S.H., "Customary Rules of Delimitation of the Continental Shelf: The Gulf States Practice", (1979-80) 11 *J. Mar.L.&Com.* 509, at p. 520.

<sup>626</sup> See A.A. El-Hakim, (1979), p. 130.

and equitable solution.<sup>627</sup> On this basis, it is arguable that they are in accordance with Article 6 CSC 1958 to a degree, in that they rely on equidistance which is modified as a result of relevant circumstances, and such relevant circumstances as they have operated in the Gulf will be dealt with below. Not being bound by Article 6 CSC 1958, as they were not parties to it, they were governed by customary international law. As has already been seen in Chapter 3, customary international law was stated in the *North Sea Continental Shelf Cases* (1969) to be delimitation by agreement in accordance with equitable principles to achieve an equitable result. Gradually, it became clear through the case law that the customary law and Article 6 became the same route to an equitable solution. Therefore the promotion of equidistance at a regional level in the Gulf both in the national legislation and the bilateral agreements is in line with the international case law which fostered this connection between Article 6 and customary law, as well as being in line with the trend in the recent case law to start a delimitation with a provisional equidistance line. It will, however, be remembered that the most recent case law, which post-dates the delimitation agreements has cast doubt upon the dominant role of equidistance, suggesting that the importance of the equitable solution may again be coming to the fore. This study contends that Gulf state practice is not inconsistent with such a trend in the case law.

Articles 74(1) and 83(1) LOSC 1982, provide that delimitation is to be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the ICJ, in order to achieve an equitable solution. It binds all of the Gulf States except for Iran and the UAE<sup>628</sup> However, the international law applicable to the Gulf States, including Iran and the UAE, is effectively customary international law and the obligation is to reach agreement on the basis of it. As has already been seen, international case law in the field of maritime delimitation essentially has established what customary international law is in this area, and which in general is that the use of the equidistance line is the provisional starting point in cases of both adjacent and opposite coastlines.

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<sup>627</sup> A. A. El-Hakim (1979) at p. 130 concluded that “the offshore boundary agreements so far reached in that area seem to have achieved their aim of ‘just’ and ‘equitable’ solutions.”

<sup>628</sup> Iran and UAE’s refusal to ratify LOSC 1982 does not prevent this thesis drawing conclusions about their relationship with international law collectively with the other Gulf States for the purpose of these conclusions; their essentially political reasons for refusal to ratify are effectively irrelevant to the conclusions drawn here.

Additionally, it is possible to conclude that in the Gulf, the national legislation and the bilateral agreements suggest that the starting point of continental shelf, and also EEZ, delimitation in the Gulf, is the equidistance line, both in respect of adjacent and opposite coastlines, which leads to an equitable solution. This accords with customary international law and Articles 74(1) and 83(1).

It is apparent from the bilateral agreements in the Gulf that the principle of equidistance, modified according to relevant circumstances, provides a useful and pragmatic solution. As has been seen in the context of international case law, it is far more conducive to certainty to have as a starting point a provisional equidistance line, subsequently modified, than relying merely on a nebulous concept of the application of equitable principles. Such an approach also allows a degree of flexibility, particularly in the context of bilateral agreements which are the result of compromise. Further, it ameliorates the possible distorting effect a strict equidistance line may have when faced with certain geographical features, such as the presence of islands.

It is now useful to put Gulf State practice in context by looking at state practice more widely. An extremely comprehensive and authoritative source of state practice of states across the world is contained in the maritime boundary research project carried out under the auspices of the American Society of International Law (“the Maritime Boundary Project”), which has analysed all known maritime boundary agreements.<sup>629</sup> Most maritime boundary delimitations which have taken place across the globe have in fact been by way of settlement.<sup>630</sup> This has provided the Maritime Boundary Project with a huge body of international state practice to examine. In 1993 Charney concluded that according to the research carried out by the Maritime Boundary Project, international state practice showed that the equidistance line had played a major role in delimitation agreements, both in relation to boundaries between opposite and adjacent coastline. Charney went on to state as follows:

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<sup>629</sup> The results are published in J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries* Vols I, II (Nijhoff, Dordrecht, 1993), Vol. III, (Martinus Nijhoff, The Hague, 1998); J.I. Charney and R.W. Smith (eds.), *International Maritime Boundaries* Vol. IV, (Martinus Nijhoff, The Hague, 2002); D.A. Colson and R.W. Smith (eds.), *International Maritime Boundaries* Vol. V (Martinus Nijhoff, Leiden, 2005), Vol. VI (Martinus Nijhoff, Leiden, 2011).

<sup>630</sup> These numbered over 130 in 1993, when the Boundary Project first published Vol 1 of its multi-volume work. See J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries* Vol I (Nijhoff, Dordrecht, 1993), pp. xxvii, xxix.

In the vast preponderance of the boundary agreements studied, equidistance had some role in the development of the line and/or the location of the line that was established...If state practice has any influence on the positive law for maritime boundary delimitations, equidistance must have a place.<sup>631</sup>

Therefore, the reliance on equidistance to such a great extent in Gulf State practice, is not an isolated phenomenon. Equidistance has the advantage of providing predictability, but is also malleable in the sense that it can be simplified, modified to take into account of relevant circumstances, or even departed from and then re-utilized at another point in the same boundary. It offers a pragmatic initial solution for negotiated compromises where states are negotiating difficult maritime boundary questions based on the complexity of the geographical situation, while seeking to retain as much control as possible over the final resulting boundary line.<sup>632</sup>

Charney drew another important conclusion in 1993, namely that examination of international state practice in the form of maritime boundary agreements:

support[s] the conclusion that no normative principle of international law has developed that would mandate the specific location of any maritime boundary line. The state practice varies substantially. Due to the unlimited geographic and other circumstances that influence the settlements, no binding rule that would be sufficiently determinative to enable one to predict the location of a maritime boundary with any degree of precision is likely to evolve in the near future...Furthermore, an *opinio juris* supporting a definitive norm certainly is absent.<sup>633</sup>

Charney echoed these observations a number of years later in 2002 by stating in that “an overall mandatory rule of international law cannot be pronounced” from a consideration of the most recent state practice.<sup>634</sup> There is nothing to suggest that

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<sup>631</sup> *Ibid.*, p. xlii.

<sup>632</sup> It is important to note that some relatively recent agreements refer to the parties’ desire to reach an equitable solution, such as the Belgium – France territorial sea and continental shelf boundary agreements of 1990, see R.R. Churchill and A.V Lowe, *The Law of the Sea* (3<sup>rd</sup> ed., Juris Publishing, Manchester University Press, 1999), p. 197.

<sup>633</sup> Charney and Alexander Vol I (1993), p. xlii.

<sup>634</sup> Charney and Smith Vol IV (2002), p. xxii.



there is any reason to believe that this view is undermined by state practice at the present time.

### **The single maritime boundary in the Gulf**

Since the late 1970s the trend, particularly outside Europe, has been to reach agreements on single maritime boundaries for all zones. Many of the single maritime boundaries, particularly in the case of opposite coasts, have been based on the equidistance principle, sometimes modified for simplicity or to take account of special circumstances.<sup>635</sup> A single maritime boundary between Qatar and Bahrain was decided in the *Qatar/Bahrain* (2001) case by the ICJ. None of the bilateral agreements in the Gulf however has established a single maritime boundary.

As has been seen in the legislation of the Gulf States the enthusiasm for the principle of equidistance has extended to the EEZ/EFZ; therefore, this lays the potential ground for a single maritime boundary. The single maritime boundary concept has also been acknowledged in the legislation of Oman, Iran, Qatar and the UAE since the 1970s. This has occurred in two ways. Firstly, in the earlier legislation of Iran in 1973, it was provided that the limit of the EFZ was to be the same as the limit of the continental shelf where the latter had been delimited by a delimitation agreement, and where it had not, it would be delimited by way of the median line. In 1980 the UAE provided for the same in relation to its EEZ. Thus, there was the attempt to make both boundaries the same where the continental shelf boundary had already been agreed. To put this in context, in many cases within Europe, existing continental shelf boundaries agreed in the 1960s and early 1970s have been treated as *de facto* boundaries for the EEZ/EFZ.<sup>636</sup> Secondly, the recognition of the concept of the single maritime boundary is seen in legislation which has established the equidistance line to delimit multiple zones, namely the territorial sea, the continental

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<sup>635</sup> A few seem to be based on equitable principles, and in two agreements, Colombia–Ecuador 1975, and Gambia–Senegal 1975, the boundary was the line of latitude extending from the terminus of the land boundary which seems to have been a solution based upon a desire for simplicity, see Churchill and Lowe (1999), p. 197-8.

<sup>636</sup> Churchill and Lowe (1999), p. 197.

shelf and the EEZ. This is seen in Oman's legislation of 1972, 1977 and 1981; in Qatar's legislation of 1974 in relation to the continental shelf and EFZ; in Iran and the UAE's legislation of 1993 in respect of the territorial sea, the continental shelf and the EEZ, and, additionally in the case of the UAE in 1993, the contiguous zone. As has been seen earlier, when applying an equidistance line to the boundary of both the continental shelf and the EEZ, the relevant circumstances which may apply to modify a strict equidistance line may well be different in relation to each zone, and the need to utilize only those which are common to both, mainly geographical factors as seen in the case law, is an important issue.

### **Relevant circumstances**

Relevant/special circumstances have been extensively considered in the international case law on delimitation. It is important to remember at this juncture, that while Gulf national legislation refers to equidistance, it does not make reference to special circumstances which may militate against the use of equidistance.

What follows sets out the relevant circumstances which, as evidenced by the delimitation agreements, have been taken into account and have been a reason for a true equidistance line to be modified to a line which is not strictly equidistant. It should be noted that the bilateral agreements do not set out to rationalise why the lines have been drawn as they have, for example, which features were considered to be relevant so that they modified an otherwise equidistance line. It is therefore a matter of analysing the lines in each case in order to ascertain what factors were considered relevant as far as is possible.

## **i. Islands**

As set out in the international case law, islands fall into the category of relevant circumstances, although minor projections and low elevations have often been disregarded. Islands are crucial to questions of delimitation in the Gulf because of their proliferation particularly on its Arab side.

There are difficulties when it comes to analysing the treatment of islands in the delimitation agreements, because often it is unclear whether islands have been given any effect. The agreements themselves do not explicitly state how the islands have been dealt with, in contrast to the case law, which sets out reasoning explaining why islands have been dealt with in a particular way. What follows is a suggested analysis of the manner in which islands have been dealt with in the agreements and does so in the context of international law.

### **a. Half-effect**

In Saudi Arabia-Iran 1968, Kharg, a large island near Iran appears to have been given half-effect in drawing the equidistance line. Giving the island half-effect entailed the drawing of two lines. Firstly, a line equidistant from the Saudi Arabian mainland and Kharg (giving Kharg full effect by considering it part of the Iranian mainland), and secondly a line equidistant from both the Saudi Arabian and Iranian mainlands (ignoring Kharg and giving it no effect). The boundary line would then be the line half-way between these two lines. The area between both lines would then be divided equally. The agreement does not explicitly confirm that this was the approach used.<sup>637</sup> However, as set out in Chapter 3 and according to Jaywardene, it is apparent that this is the method which was used.<sup>638</sup> As has already been seen in Chapter 6, in this agreement, the Iranian island of Nakhilu and the Saudi Arabian island of Abu Ali were also given partial effect.

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<sup>637</sup> As recognized in *Limits in the Seas*, No. 94, "Continental Shelf Boundaries: The Persian Gulf" (Office of the Geographer, US, September 11, 1981), p. 7.

<sup>638</sup> H.W. Jayewardene, *The Regime of Islands in International Law* (Martinus Nijhoff Publishers, Dordrecht, 1990), pp. 356-7.

It has been observed that this agreement was the first occurrence of the use of half-effect.<sup>639</sup> As such, this agreement has led the way in the application of this technique which is ostensibly done to produce an equitable result. It has also been observed that case law has cited this agreement as an example of giving islands partial or half-effect, even though the agreement is only *res inter alios acta*.<sup>640</sup> In this regard, it will be remembered that in the *Anglo French Arbitration* (1977) the Tribunal gave only half-effect to the Scilly Isles in defining the equidistance line between the Parties in the Atlantic section of the boundary, apparently looking to the Saudi Arabia-Iran 1968 agreement for inspiration. It stated:

A number of examples are to be found in State practice of delimitations in which only partial effect has been given to offshore islands situated outside the territorial sea of the mainland...in one instance, at least, the method employed was to give half, instead of full, effect to the offshore island in delimiting the equidistance line.<sup>641</sup>

The agreement was apparently also referred to by the ICJ in *Tunisia v Libya* (1982) where the Kerkennah islands off the Tunisian coast were also given half effect:

The Court would recall...that a number of examples are to be found in State practice of delimitations in which only partial effect has been given to islands situated close to the coast.<sup>642</sup>

Therefore, such case law has looked to Gulf State practice in the form of the Saudi Arabia-Iran 1968 agreement as an example of how to solve the issue of islands which were complicating the drawing of the continental shelf boundary before them and in order to reduce as much as possible the distorting effect of an island on the drawing

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<sup>639</sup> For example, see D. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", in Charney and Alexander Vol I (1993), pp. 131-151 at 140. See also C.G. MacDonald, *Iran, Saudi Arabia and the Law of the Sea* (London, Greenwood Press, 1980), who states at p. 140 that the Tribunal in the *Anglo-French Arbitration* (1977) "followed the precedent" of Iran and Saudi Arabia's treatment of Kharg..

<sup>640</sup> See, for example, MacDonald (1980), pp. 139-40.

<sup>641</sup> 18 ILM 397, para. 251.

<sup>642</sup> [1982] ICJ Rep 18, para. 129.

of the boundary line. It is possible therefore to go so far as to assert that Gulf State practice has had a significant influence on international case law in this respect.

It should be noted also that the delimitation had ramifications in respect of the known oil resources in the disputed area. A true equidistance line would have meant that the entire Marjan-Feyerdoon oil deposits would be on Saudi Arabia's side of that line. In the event the deposit was divided between both States, the part on Saudi-Arabia's side being Marjan, and that on Iran's side being Fereydoon (re-named Frozan after the Iranian Islamic Revolution).

b. Islands which are granted territorial seas by way of a semi-enclave

As demonstrated by the international case law considered in Chapter 3, some islands may have no effect upon an equidistance line in the sense that they are not treated as relevant circumstances which causes it to be deflected. However, instead an arc is drawn around their territorial sea, that arc being part of the delimitation line. It will be remembered that the method of enclaving was seen in the case law as early as the *Anglo-French Arbitration* (1977) and the Gulf States have utilised this method of delimitation in a number of their bilateral agreements.

As referred to in Chapter 6, following the Sharjah-Umm al Qaywayn 1964 agreement, in 1971 Abu Musa island was granted a 12nm territorial sea, and further in the *Dubai/Sharjah Arbitration Award* of 1981, Abu Musa was granted a 12nm territorial sea. The islands of Farsi and Al-'Arabiyyah, which are many miles from the mainlands of each State, were granted territorial seas of 12nm in the Saudi Arabia-Iran 1968 agreement, but ignored for the purpose of drawing the line. Because the territorial sea of the each island overlaps with the other, an equidistance line separates each territorial sea. The island of Dayyinah was similarly treated in Qatar-UAE (Abu Dhabi) 1969, being granted a 3nm territorial sea (at the time both States adhered to this territorial sea measurement following the practice of Britain), so that the lateral equidistance line was diverted around the 3nm arc around Dayyinah. Similarly in Iran-Oman 1974, the Iranian island of Larak was granted a 12nm territorial sea. In Iran-Dubai 1974, a 12nm arc was drawn around the Iranian island of Sirri, which

enclaved its 3nm territorial sea. In general, therefore, the Gulf agreements show that islands which in are on or near the boundary line are granted territorial seas.

c. Islands which are ignored as base points from which to draw the boundary and therefore given no effect

In general in the Gulf delimitation agreements, it is the case that islands, especially those which straddle or are on the “wrong side” of what would be the equidistance line, are ignored as base points from which to draw the line. This is in order to prevent disproportionate apportionment of the continental shelf to each state party to the agreement. There are many examples in the agreements where such islands were ignored.

In Bahrain-Saudi Arabia 1958, at points 1-4 and 7 of the line, small islands between the coasts of both States were not utilised to delimit the line. In Saudi Arabia-Iran 1968, the islands of Farsi and Al-‘Arabiyah which are many miles from the mainlands of each State, were apportioned their own 12nm territorial seas, but ignored for the purpose of drawing the line. Apart from the Iranian island of Kharg, a large island located near the mainland which was given half effect, all other islands and islets were totally ignored in the Saudi Arabia-Iran 1968 agreement.<sup>643</sup> In Abu Dhabi-Qatar 1969 it is not at all clear that small islands on either side of the boundary were given any effect. The Abu Dhabi island of Dayyinah had an arc drawn around it, as referred to above, but did not in itself operate to modify an otherwise equidistance line. In Iran-Qatar 1969 all islands were apparently disregarded for the purpose of drawing the line, and in Bahrain-Iran 1971 no effect was apparently given to islands situated on either side of the line, although as has been mentioned earlier, the line, based upon equidistance, seems to have utilised two base points, one on a Bahraini islet north of Jazirat al-Muharraq, and the other on the Iranian islet of

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<sup>643</sup> A.A. El-Hakim (1979) at p.95 states that “it is not clear either why the Saudi islands of Janah, al Jurayd, al Qurayyin, Qiran and Hurqus have had no effect whatever in delimiting the Saudi Arabia-Iran continental shelf boundary. These islands are so located that they are within twelve-miles of the Saudi coast and each other, and therefore may be considered as being within the Saudi Arabian baseline, in accordance with the Saudi decree on the territorial sea.”

Nakhilu.<sup>644</sup> In Iran-Oman 1974, while effect was given to some islands in drawing the line, others were given no effect. In Iran-Dubai 1974, all islands were disregarded, with a 12nm arc drawn around the Iranian island of Sirri.<sup>645</sup>

As stated in Chapter 6, the treatment of islands in the delimitation of the continental shelf in the Gulf has drawn on methods utilised in international case law. There is a significant consistency with international law, although in fact, in the case of the seemingly half-effect given to Kharg Island in Saudi Arabia – Iran 1968, an innovative approach was shown, as referred to in Chapter 6. However, the most significant innovation demonstrated in Gulf State practice is in respect of other relevant circumstances taken into account in delimitation, as set out below.

## **ii. The existence of oil and gas fields in the continental shelf**

The delimitation agreements are a particularly significant source of state practice because the main motivation behind their inception was the presence or anticipated presence of natural resources existing in the sea bed and the need for certainty over the territory in which state's continental shelf territory they were located. This in turn impacted upon the granting of oil concessions to oil companies. Thus resources and economics were the driving force behind them, and were the essential reason for their existence.

In four delimitation agreements, the presence of an oilfield caused a boundary line, which would otherwise be an equidistance line, to be modified, and as such it may be said that they were relevant circumstances for the purpose of Gulf State practice. Firstly, in the Bahrain-Saudi Arabia agreement 1958, the line drawn was based upon equidistance, but not where the line was in the vicinity of the Fasht Abu-

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<sup>644</sup> Charney and Alexander, Vol II (1993), p. 1482, and *Limits in the Seas* No. 58, "Continental Shelf Boundary: Bahrain-Iran", (Office of the Geographer, September 13, 1974), p. 4.

<sup>645</sup> An important question is whether there is any identifiable pattern, such as of size or level of habitation, in the islands which have been ignored and in those which have been given effect. This issue has been beyond the scope of this thesis which has focused on the Gulf national legislation and bilateral agreements. Further research more strongly based on geography would be best placed to answer such a question. An example of a thesis with its roots based in geography is F.M.J. Al-Muwaleed, *Maritime Boundary Delimitation of the Kingdom of Saudi Arabia. A Study in Political Geography* (PhD Thesis, University of Durham, 1993).

Sa'fah oilfield. At point 12 of that line, the boundary deviates north east towards Bahrain, so as to include the oilfield within Saudi Arabia's territory, thus preserving its unity. A true equidistance line would have dissected the oilfield. Secondly, in the Abu Dhabi – Dubai 1968 agreement, the boundary was altered from that originally agreed in 1965 to grant to Dubai a greater maritime area, including the Fateh oil wells. Thirdly, in the Saudi Arabia-Iran agreement 1968, the line, from point D, deviates from the equidistance line to take into account the Marjan-Feyerdoon oilfield, and to split it between Saudi Arabia and Iran. A true equidistance line would have caused the entire oilfield to be on Saudi Arabia's side of the line. Fourthly, in the Qatar–Abu Dhabi 1969 agreement, the partly equidistant boundary line deviated from equidistance in the sense that point B of the line was fixed at the location of oil well No. 1 in the Al Bunduq oilfield in order to solve the dispute over it between the Parties.

It will be remembered additionally that in the *North Sea Continental Shelf* cases (1969) the unity of a resource deposit was identified as one factor which would be balanced amongst others in coming to an equitable result, although it was not a relevant circumstance as such. The concept of the unity of a deposit was not adhered to in the Saudi Arabia-Iran 1968 and Qatar–Abu Dhabi 1969 agreements. It is apparent that whether or not the unity of a deposit was maintained was a matter of compromise in each individual case, and there is no suggestion in Gulf State practice that the preservation of the unity of a deposit is considered as an overriding principle or acts as a restraining factor in any way.

However, as is clear from the above, oil and gas resources have quite openly been viewed as relevant circumstances modifying an equidistance line. This is hardly surprising considering the motivation behind most of the bilateral agreements being the need for certainty in establishing rights to explore and exploit such resources. As discussed in Chapter 6, the Gulf States, in permitting the existence of oil and gas resources to affect the placement of the equidistance line, have gone beyond the constraints put in place by international case law. This is a point of innovation in Gulf State practice when considered in the context of international law.



### **iii. Navigation**

Another area in which delimitation in the Gulf exhibits innovation, when placed within the context of international law, is the way in which the navigational interests of Saudi Arabia were relevant circumstances which were determinative in affecting the placement of the boundary line in Saudi Arabia – Qatar 2008 and Saudi Arabia – UAE 1974. As has already been mentioned, Saudi Arabia's concern with navigation has already appeared within a different context, namely in its legislation in respect of the contiguous zone, which, extending outside the parameters of TSCZ 1958 and LOSC 1958, stated that the purposes of its contiguous zone was to ensure the prevention of infringement of law relating to, *inter alia*, security and navigation. It is of note that both security and navigation are added to the provision on the contiguous zone. Similarly, in Iran's response to US objection regarding the provision of safety zones in its EEZ, which also went beyond LOSC 1982 provisions, Iran stated that they were essential for the protection of installations for oil exploration, and also in order to protect navigation. In light of the suggestion of both Saudi Arabia and Iran that both security and navigation are crucial interests in the Gulf which are interlinked, it may be asked at this point whether, as a result, security factors may in due course also be considered relevant to delimitation in the Gulf in the future.

## **Chapter 8**

### **Conclusions**

The significance of this study lies in the fact that it has conducted a comprehensive and up to date examination of Gulf national legislation as well as bilateral maritime boundary agreements, both of which constitute state practice, in order to identify trends and circumstances which have played a significant part in continental shelf boundary delimitation in the Gulf region. Since Razavi's work in 1997, there have been a number of important developments in international case law, including the *Qatar v Bahrain* (2001) decision, as well as more recent legislation in the Gulf, and the relatively recent Saudi Arabia – Qatar 2008 delimitation.

In answer to the research questions posed in Chapter 1, it is firstly contended that the findings of this thesis demonstrate that there are clearly identifiable trends in Gulf law and state practice in the field of delimitation of the continental shelf. The body of Gulf law and state practice which has been examined can be characterised by a significant degree of appreciation of, and consistency with, international law. It is quite apparent from this material that international law has operated as a restraint and also a guide to the Gulf States. The Gulf States have exhibited a desire to engage with the present rules of the international law of the sea and to utilize it to their advantage. Despite the fact that Iran and the UAE are the only Gulf States not to have yet ratified LOSC 1982, they have nevertheless exhibited on the whole the same tendency.

Having carried out an examination and analysis of Gulf legislation on baselines, maritime zones and delimitation, it is quite clear that in general there is a substantial degree of consistency with international law. National legislation of the Gulf States often explicitly refers to international law, and even to U.N. Conventions such as LOSC 1982. Notable departures from the present basis of the rules of international law include the legislation regarding the straight baselines of Saudi

Arabia, Iran, the UAE and Oman and the legislation on the contiguous zone and EEZ of Saudi Arabia, Iran and the UAE with the wider powers claimed within these maritime zones. This relationship between Gulf legislation and international law, whereby there is a recognition of international law and the benefits it affords, but also the willingness to extend beyond its confines, foreshadows the findings of the thesis in respect of the delimitation of the maritime boundaries in the Gulf.

With regard to delimitation of boundaries in the Gulf, there is also a substantial degree of consistency with international law. As has been seen in Chapters 6 and 7 of this thesis, the utilisation of the equidistance line in delimitation in the Gulf is generally in accordance with international law developments. Further, the many examples of the treatment of islands as relevant circumstances when drawing the equidistance line is also familiar from an international law perspective. However, it is important to note an important innovation with regard to the treatment of islands in that the Saudi Arabia-Iran 1968 agreement has been recognised as the first usage of half-effect which influenced subsequent international case law, and was therefore an important precedent for the region as well as for general international law.

Aside from the above, this thesis contends, also in answer to the research questions posed in Chapter 1, that there are a number of highly significant innovative elements in Gulf law and state practice which may be said to offer useful lessons for the law of maritime boundary delimitation more generally. The findings of this research has uncovered emphases in practice which are fairly remarkable and go beyond the limitations which are quite apparent in international case law. The first innovation is that the presence of oil and gas fields have *de facto* been treated as relevant circumstances which have altered the path of an equidistance line delimiting the continental shelf boundary between states. It will be recalled from Chapter 3 of this thesis which reviews international case law, as well as Chapter 6 which deals with the ICJ Judgement of *Qatar v Bahrain* (2001), that it is extremely unlikely that mineral resources will be considered to be relevant circumstances by a court or tribunal. The second innovation is that the navigational interests of Saudi Arabia have been considered relevant enough to affect the placement of a boundary in Saudi Arabia – Qatar 2008 and Saudi Arabia – UAE 1974. Once more, in light of the case law, it is extremely unlikely that this would be the case before the ICJ or a tribunal.

The reasons for such innovations are clear. As discussed in Chapter 1 of this thesis, the Gulf is a relatively small, overcrowded semi – enclosed sea bordered by eight states in which oil and gas fields abound throughout. In this relatively small area of competing interests the examples giving effect to navigational interests in delimitation in the Gulf is hardly surprising, in the same way that it is only to be expected that the existence of oil and gas resources would have an effect upon delimitation which would influence the use of the equidistance line. The delimitations in the Gulf are realistic solutions which, in their expediency, have allowed for a significant degree of agreement over contentious problems. What is of real interest is the explicit manner in which oil and gas resources and navigational interests are seen as relevant and taken into account accordingly. The resulting delimitation in the Gulf provides a good example of how delimitation can protect such interests in a useful and pragmatic way solving difficult problems of access to precious resources and navigation routes. What has been uncovered by this thesis is a series of delimitations in an area of sea which is subject to many competing interests in mineral resources, economic interests arising therefrom, and matters of navigational concerns. Boundary problems have been solved as a result of addressing the actual concerns which exist between states but within the overarching framework of international law. This brings into sharp relief the limitations of the case law in this area which has ignored matters important to parties such as oil and gas interests, navigation and also security interests when deciding on delimitation matters. Very often, international case law leaves the unsatisfactory impression that these factors have played a part in the judgments and decisions made, although remaining hidden and unquantifiable.

This study also demonstrates the contribution of international law as a means of reaching amicable solutions in a small semi-enclosed sea bordered by a number of states with competing interests, in a strategically and economically vital part of the world. The States bordering the Gulf Sea, although all Muslim, have very different political viewpoints, which often puts Saudi Arabia and Iran, for example, at loggerheads, with each striving for hegemony in the Gulf region. The Gulf States have very varied histories, and display huge disparities in demographics and wealth. Territorial boundary disputes have often festered for many years, been a source of armed conflict, and in some cases still remain to be settled. It was therefore always

likely that disputes over maritime boundary delimitation in the Gulf would prove just as difficult to resolve. Extraordinarily, this has not been the case. Although a determination not to escalate conflict to seaward areas must be one of the reasons for this, the rules of the international law of the sea and the flexibility they allow for has provided an arena for negotiation and compromise. This shows the continued vitality and importance of international law, and particularly the international law of the sea, as a guide and overarching framework for states to abide by but giving effect to their own regional proclivities and circumstances.

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1. BAHRAIN-SAUDI ARABIA BOUNDARY AGREEMENT. DATED  
22 FEBRUARY 1958<sup>1</sup>

Whereas the regional waters between the Kingdom of Saudi Arabia and the Government of Bahrain meet together in many places overlooked by their respective coasts,

And in view of the royal proclamation<sup>2</sup> issued by the Kingdom of Saudi Arabia on the 1st Sha'aban in the year 1368 (corresponding to 28th May 1949) and the ordinance<sup>3</sup> issued by the Government of Bahrain on the 5th June 1949 about the exploitation of the sea-bed.

And in view of the necessity for an agreement to define the underwater areas belonging to both countries,

And in view of the spirit of affection and mutual friendship and the desire of H.M. the King of Saudi Arabia to extend every possible assistance to the Government of Bahrain,

the following agreement has been made:

*First clause*

1. The boundary line between the Kingdom of Saudi Arabia and the Bahrain Government will begin, on the basis of the middle line from point 1, which is situated at the mid-point of the line running between the tip of the Ras al Bar (A) at the southern extremity of Bahrain and Ras Muharra (B) on the coast of the Kingdom of Saudi Arabia.

2. Then the above-mentioned middle line will extend from point 1 to point 2 situated at the mid-point of the line running between Point (A) and the northern tip of the island of Zakhnuniya (C).

3. Then the line will extend from point 2 to point 3 situated at the mid-point of the line running between point A and the tip of Ras Saiya (D).

4. Then the line will extend from point 3 to point 4, which is defined on the attached map<sup>4</sup> and which is situated at the mid-point of the line running between the two points E and F which are both defined on the map.

5. Then the line will extend from point 4 to point 5, which is defined on the map and which is situated at the point (sic) of the line running between the two points G and H which are defined on the map.

<sup>1</sup> English text provided by the Permanent Representative of Bahrain to the United Nations in a note verbale of 14 September 1972.

<sup>2</sup> Reproduced in ST/LEG/SER.B/1, p. 22.

<sup>3</sup> Reproduced *ibid.*, pp. 24-25.

<sup>4</sup> The map is not reproduced for technical reasons.

4. From there to a point situated at latitude 26 degrees 59 minutes 30 seconds north and longitude 50 degrees 46 minutes 24 seconds east approximately.

5. From there to a point situated at latitude 26 degrees 59 minutes 30 seconds north and longitude 50 degrees 40 minutes east.

6. From there to a point situated at latitude 27 degrees north and longitude 50 degrees 40 minutes east approximately.

7. From there to the starting point.

This area cited and defined above shall be in the part falling to the Kingdom of Saudi Arabia in accordance with the wish of H.H. the Ruler of Bahrain and the agreement of H.M. the King of Saudi Arabia. The exploitation of the oil resources in this area will be carried out in the way chosen by His Majesty on the condition that he grants to the Government of Bahrain one half of the net revenue accruing to the Government of Saudi Arabia and arising from this exploitation, and on the understanding that this does not infringe the right of sovereignty of the Government of Saudi Arabia nor the right of administration over this above-mentioned area.

#### *Third Clause*

Two copies of a map<sup>1</sup> shall be attached to this agreement, making as clear as possible the positions and points referred to in the foregoing subsections, subject to the map being made final by the expert knowledge of the committee defined in the fourth clause below. This map shall become final and an integral part of this agreement after approval and signature by the accredited representatives of the two governments on behalf of the two parties.

#### *Fourth Clause*

The two parties shall choose a technical body to undertake the necessary measures to confirm the boundaries in accordance with the provisions of this agreement on the condition that this body shall complete its work two months at the most after the date of execution of this agreement.

#### *Fifth Clause*

After the committee referred to in the fourth clause has completed its work and the two parties agree on the final map which it will have prepared, a body of technical delegates from both sides shall undertake the placing of signs and the establishing of the boundaries in accordance with the detailed announcements made clear in the final map.

#### *Sixth Clause*

This agreement shall come into effect from the date on which it is signed by the two parties.

<sup>1</sup> The map is not reproduced for technical reasons.

6. Then the line will extend from point 5 to point 6, which is defined on the map and which is situated at the mid-point of the line running between the two points I and J which are defined on the map.

7. Then the line will extend from point 6 to point 7 situated at the mid-point of the line running between the south-western tip of the island of Umm Nasan (K) and Ras Al Kureya (L).

8. Then the line will extend from point 7 to point 8 situated at the western extremity of the island Al Baina As Saghir, leaving the island to the Government of Bahrain.

9. Then the line will extend from point 8 to point 9 situated at the eastern extremity of the island Al Baina Al Kabir, leaving the island to the Kingdom of Saudi Arabia.

10. Then the line will extend from point 9 to point 10 situated at the mid-point of the line running between the north-western tip of Khor Fasht (M) and the southern end of the island of Chaschus (N).

11. Then the line will extend from point 10 to point 11 situated at the mid-point of the line running between point O situated at the western edge of Fasht Al Jarim and point N referred to in subsection 10 above.

12. Then the line will extend from point 11 to point 12 situated at latitude 26 degrees 31 minutes 48 seconds north and longitude 50 degrees 23 minutes 15 seconds east approximately.

13. Then the line will extend from point 12 to point 13 situated at latitude 26 degrees 37 minutes 15 seconds north and longitude 50 degrees 33 minutes 24 seconds east approximately.

14. Then the line will extend from point 13 to point 14 situated at latitude 26 degrees 59 minutes 30 seconds north and longitude 50 degrees 46 minutes 24 seconds east approximately, leaving the Rennie Shoals (known as Najwat Al Riqai and Fasht Al Anawiyah) to the Kingdom of Saudi Arabia.

15. Then the line will extend from point 14 in a north-easterly direction to the extent agreed upon in the royal proclamation issued on the 1st Sha'aban in the year 1368 (corresponding to 28th May, 1949) and in the ordinance issued by the Government of Bahrain on the 5th June, 1949.

16. Everything that is situated to the left of the above-mentioned line in the above subsections belongs to the Kingdom of Saudi Arabia and everything to the right of that line to the Government of Bahrain, with the obligation of the two governments to accept what will subsequently appear in the second clause below.

#### *Second Clause*

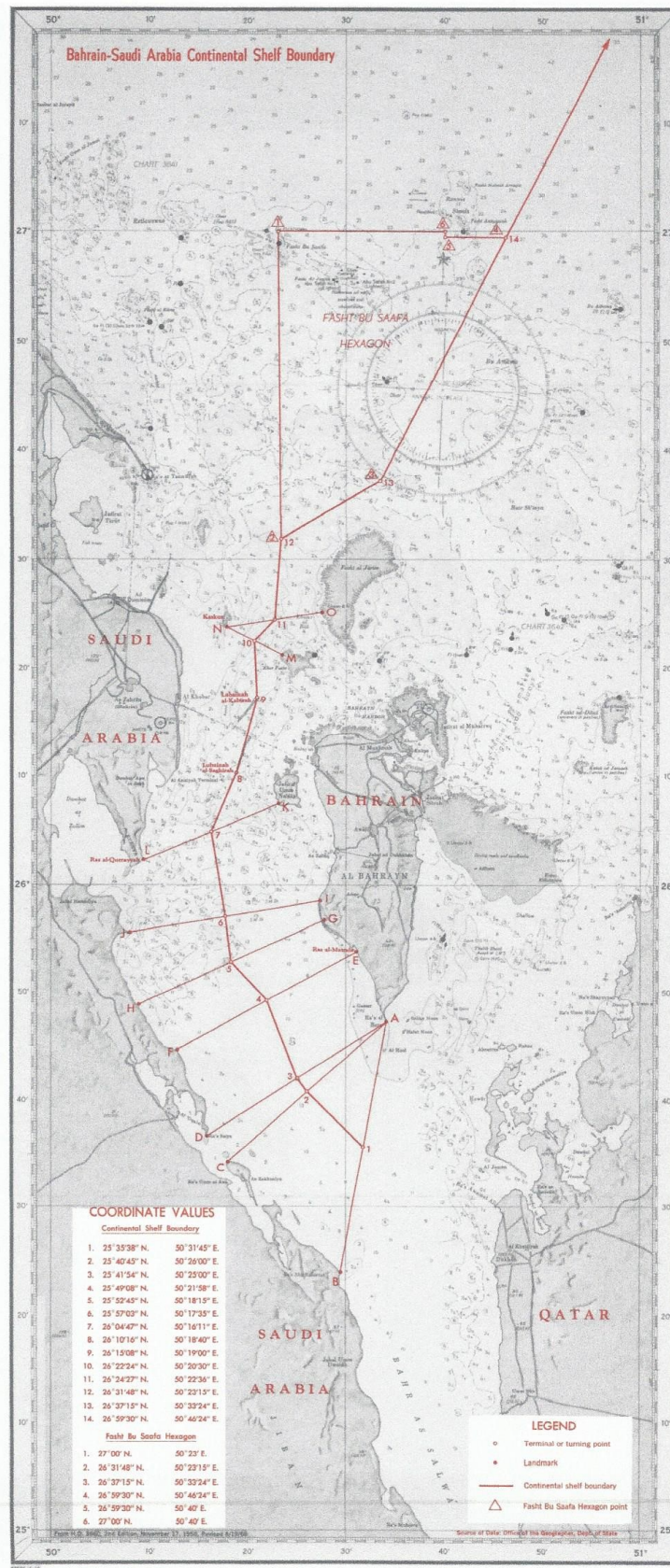
The area situated within the six defined sides is as follows:

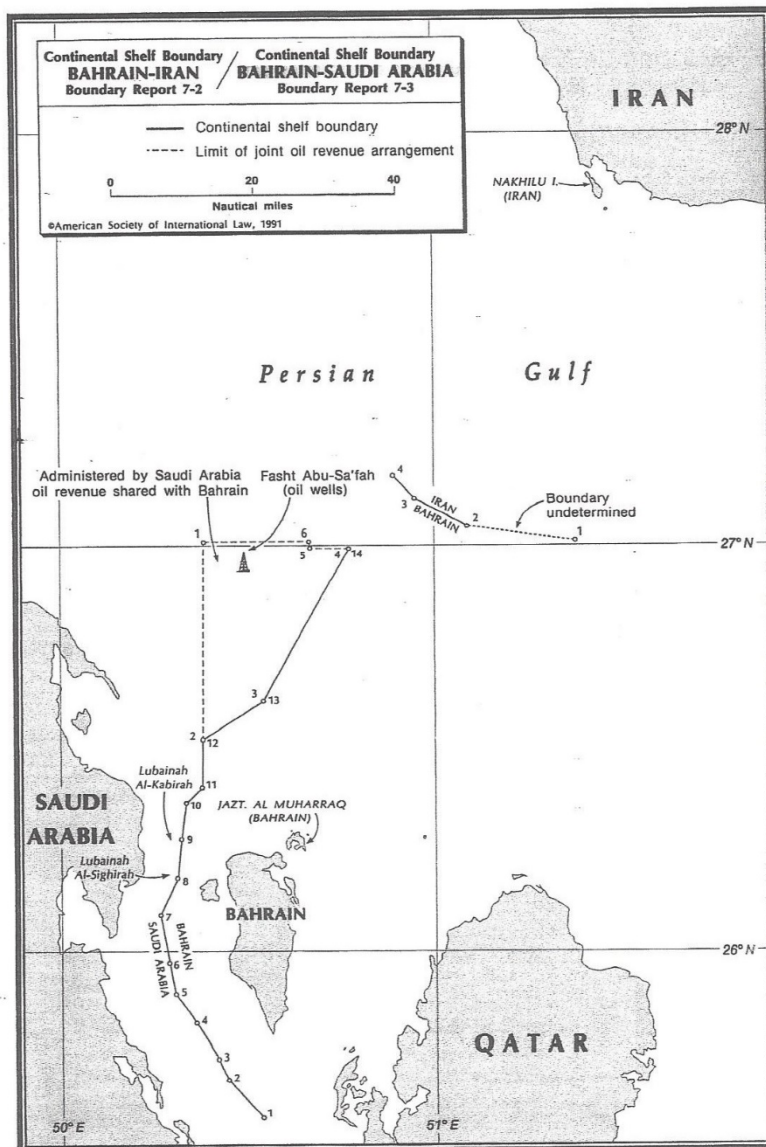
1. A line beginning from a point situated at latitude 27 degrees north and longitude 50 degrees 23 minutes east approximately.

2. From there to a point situated at latitude 26 degrees 31 minutes 48 seconds north and longitude 50 degrees 23 minutes 15 seconds east approximately.

3. From there to a point situated at latitude 26 degrees 37 minutes north and longitude 50 degrees 33 minutes east approximately.









**Sea-Bed Boundaries – Agreement by the Ruler of Sharjah**

I agree that the sea-bed boundary between Sharjah and Umm al Qaywayn shall be a line starting from a point on the coast near the site of the dead well Mirdar Bu Salaf and going out to sea on a bearing of 312°.

I further agree that the sea-bed boundary between Sharjah and Ajman in the north shall be a line starting from a point on the coast in Zora opposite the point where the track from Zora Fauqiniyah (Kharijiyah) debouches on to the Zora Tahtiyah track and going out to sea on a bearing of 304°.

I further agree that the sea-bed boundary between Sharjah and Ajman in the south shall be a line starting from a point on the coast in Bu Athum near the circle of white sand-hills about half way between Shaikh Reshid' Tower and the Bu Tayyarah well, and going out to sea on a bearing of 310°.

I further agree that beacons may be erected on the shore at the points referred to above where the boundaries start.

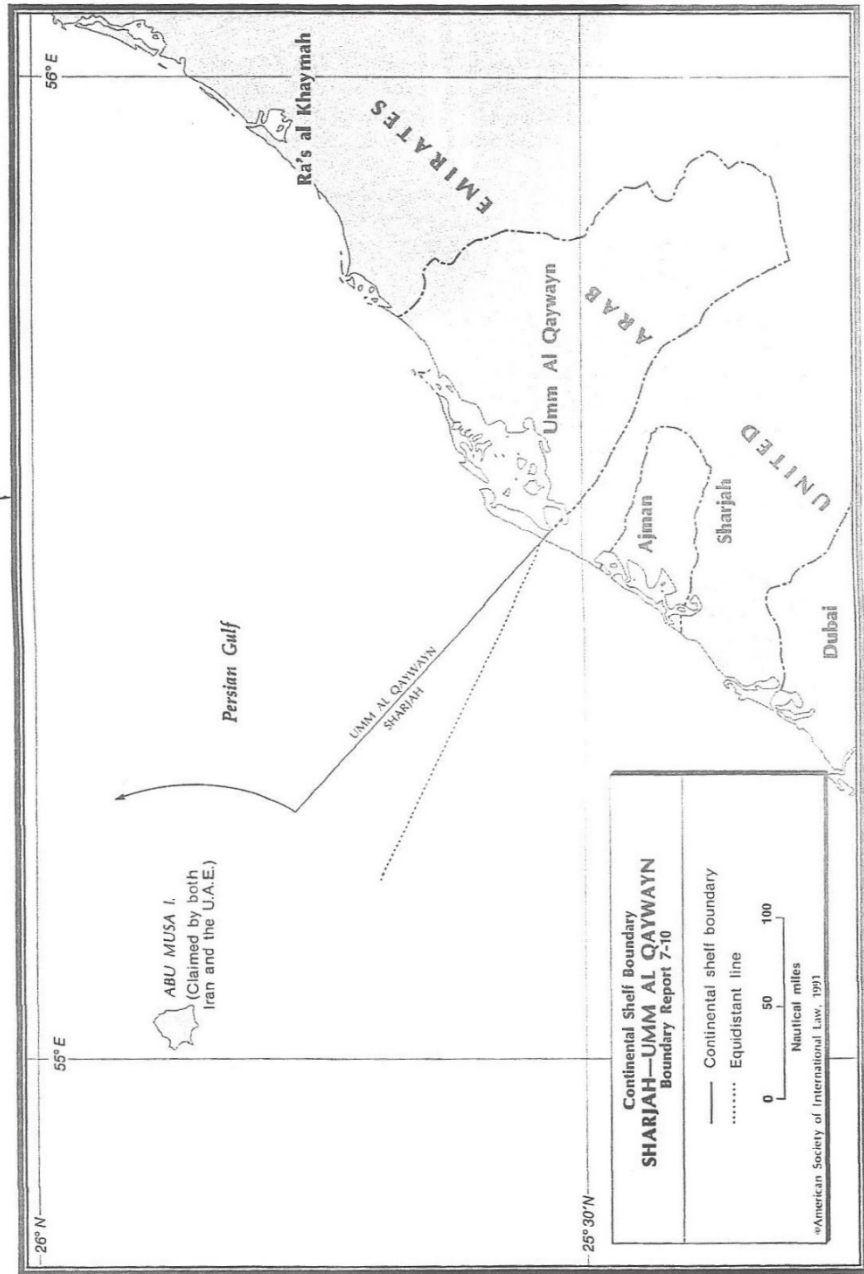
(Shaikh Saqr bin Sultan Al Qasimi)  
Ruler of Sharjah.

**Sea-Bed Boundary – Agreement by the Ruler of Umm al Qaywayn**

I agree that the sea-bed boundary between Umm al Qaywayn and Sharjah shall be a line starting from a point on the Coast near the site of the dead well Mirdar bu Salaf and going out to sea on a bearing of 312 degrees.

I further agree that beacons may be erected on the shore at the point referred to above where the boundary starts.

(Shaikh Ahmed bin Rashid al Moala)  
Ruler of Umm al Qaywayn.



7. AGREEMENT<sup>1</sup> BETWEEN THE STATE OF KUWAIT AND THE KINGDOM OF SAUDI ARABIA RELATING TO PARTITION OF THE NEUTRAL ZONE. SIGNED ON 7 JULY 1965

*In the Name of God the Compassionate, the Merciful*

*Whereas* the two Contracting Parties have equal rights in the shared Zone whose land boundaries are delineated in accordance with the Boundary Convention of Al Uqair dated 13 Rabi Al-Thani, 1341 H., corresponding to 2nd December, 1922, and the agreed Minutes signed at Kuwait on 12 Shawal, 1380 H., corresponding to 21st March, 1961 (called hereinafter the "Partitioned Zone"), and

*Whereas* the aforesaid Convention did not regulate the exercise of those rights, and as that state of affairs was of a provisional nature which entailed serious practical difficulties, and

*Whereas* the two Contracting Parties, by an exchange of notes on 15/3/1383 H., corresponding to 5/8/1963 (in regard to partitioning the Neutral Zone) have agreed to put an end to that temporary state of affairs by means of partitioning that Zone into two sections, so that the one shall be annexed to the State of Kuwait and the other shall be annexed to the Kingdom of Saudi Arabia, provided that these equal rights of the two Parties shall be preserved in full in the whole partitioned Zone as this had originally been decided by the Convention made at Al Uqair that it is shared between the two parties, and shall be safeguarded by the provisions of international responsibility. They therefore have agreed upon the following:

*Article I*

The boundary line between the two sections of the Zone is to be the line which divides them into two equal parts and which begins from a point at the mid-eastern shore on the low-tide line, and ends at the western boundary line of the Zone. That boundary line shall be demarcated in a natural manner by the Committee of Survey which is to determine the boundary lines of the Neutral Zone and which is to be set up in the manner agreed upon in the protocol annexed to the notes exchanged between the two parties at Jeddah on 15/3/1383 H., corresponding to 5/8/1963. This boundary line shall be approved by the two sides in an agreement they will conclude later on.

*Article II*

Without prejudice to the provisions of this Agreement, the area lying to the north of the line dividing the partitioned Zone into two equal parts shall be annexed to Kuwait as an integral part of its territory, and the area lying to the south of the line dividing the Partitioned Zone into two equal parts shall be annexed to the Kingdom of Saudi Arabia as an integral part of its territory.

*Article III*

Each of the Contracting Parties shall exercise over that part of the Partitioned Zone annexed to its territory the same rights of administration, legislation and

<sup>1</sup> The official Arabic text is reproduced in *Kuwait Al-Yaum*, No. 581 of 19 June 1966; the unofficial English translation appears in *American Journal of International Law*, vol. 60, p. 744, 1966. Entered into force on 25 July 1966.

defense as those exercised in its territory of origin, while observing other provisions of this Agreement, and without prejudice to the rights of the Contracting Parties to natural resources in the whole of the Partitioned Zone.

*Article IV*

Each of the Contracting Parties shall respect the rights of the other Party to the shared natural resources either existing at present or which shall exist in future in that part of the Partitioned Zone which is annexed to its territory.

*Article V*

If one of the parties cedes or otherwise alienates all or part of said equal rights which are safeguarded by the provisions of this Agreement and which are exercised over any part of the Partitioned Zone to any other State, the other Party shall be relieved of its obligations under this Agreement.

*Article VI*

Each of the Contracting Parties shall be under obligation not to take any local or international measure or action which may result in whatsoever manner in hindering the other Party from exercising the rights which are safeguarded by this Agreement, and it shall be under obligation to co-operate with the other Party fully to protect those rights.

*Article VII*

Each of the Contracting Parties shall exercise over the territorial waters which adjoin that part of the Partitioned Zone which will be annexed to its territory the same rights as those exercised over the part annexed to its territory; and the two Contracting Parties shall agree to determine the boundary line which divides the territorial waters which adjoin the Partitioned Zone.

For the purpose of exploiting the natural resources in the Partitioned Zone, not more than six marine miles of the sea-bed and sub-soil adjoining the Partitioned Zone shall be annexed to the mainland of that Partitioned Zone.

*Article VIII*

In determining the northern boundary of the submerged area adjoining the Partitioned Zone, it shall be delineated as if the Zone has not been partitioned and without regard to the provisions of this Agreement.

The two Contracting Parties shall exercise their equal rights in the submerged area beyond the aforesaid six mile limit mentioned in the preceding article by means of joint exploitation, unless the two Parties agree otherwise.

*Article IX*

Each of the Contracting Parties shall, in the part of the Partitioned Zone annexed to the other Party, evacuate the establishments occupied by its government officials who perform administrative and legal work, and hand it over to the other Party, provided that such provision shall not apply to establishments occupied by government officials engaged in oil-gauging, checking and auditing accounts, technical supervision, purchasing committees and such similar supervision work.

*Article X*

If one of the Contracting Parties entrusts the companies that have been granted a joint concession by the two Parties with the construction in that part of the Partitioned Zone annexed to its territory of establishments for judicial and administrative purposes in accordance with terms of the concession, the cost of constructing such establishments shall be deducted from the capital expenses of the concessionary companies, provided that such costs shall be limited to necessary and reasonable expenses.

*Article XI*

The present agreements of oil concessions shall remain in force and each Party pledges to respect, in that half of the Partitioned Zone to be annexed to its territory, their provisions and the amendments entered into. It shall also undertake such legislative and legal measures necessary for the continued exercise by the concessionary companies of their rights and the discharge of their obligations.

*Article XII*

Each Contracting Party shall be responsible, in that part of the Partitioned Zone to be annexed to its territory, for protection and security according to the obligations provided for in the present concession agreements in force.

*Article XIII*

To avoid double taxation, each Contracting Party shall undertake to enact legislative safeguards which ensure the non-imposition of taxes, customs duties or royalties on the companies that have been granted a concession in the Partitioned Zone by the other Party.

*Article XIV*

Entry and movement in the Partitioned Zone of citizens of the two Contracting Parties, who are working as officials, employees, labourers and contractors in establishments and firms engaged in the exploitation of natural resources according to concessions now in force or affiliated firms shall be by a valid passport issued by the other Party or by a card of special form to be issued by one of the Contracting Parties, and to be agreed upon, without the need to obtain an entry visa.

*Article XV*

Without prejudice to the concessionary oil agreements in force, each of the Parties shall ensure, in that part of the Partitioned Zone to be annexed to its territory, to the citizens of the other Party freedom to work and the right to practice any profession or occupation on equal footing with its citizens, concerning oil resources granted in the present concessions or in what may supersede them in future.

With regard to natural resources which may be discovered in future, the two Parties shall agree on the rights of each other's citizens to work or practice any occupation related thereto.

*Article XVI*

Each of the Contracting Parties shall respect the rights of the other Party's citizens in the present establishments and constructions existing in that part of the Partitioned Zone to be annexed to its territory.

*Article XVII*

To ensure the continuance of the two Contracting Parties' efforts in exploiting natural resources in the Partitioned Zone, a joint permanent committee (called hereinafter the "Committee") shall be set up.

*Article XVIII*

The Committee shall be composed of an equal number of representatives of the two Contracting Parties; and the two competent Ministers for Natural Resources in the two Contracting Governments shall agree upon the number of Committee members, its rules of procedure and the manner of securing the necessary appropriations for it.

*Article XIX*

The Committee shall have the following powers:

(a) To facilitate passage of officials and employees (other than the citizens of the two Parties) of concessionary companies and of ancillary companies and establishments in the Partitioned Zone.

(b) Studies relative to projects of exploiting shared natural resources.

(c) To study the new licenses, contracts, and concessions relating to shared natural resources and submit its recommendations to the two competent Ministers as to what it deems appropriate in this respect.

(d) To consider whatever the two competent Ministers refer to it.

The Committee in performing its duties shall have the right to sign contracts, and shall submit its reports and recommendations directly to the two competent Ministers.

The two Contracting Parties shall endeavour to make sure that the Committee be ready to start its work within six months at most from the date of the entry into force of the present Agreement.

*Article XX*

The two competent Ministers shall consult together in granting or amending any new concession relating to shared natural resources. The Party which does not agree with the other shall send him a written notification giving the reasons, before granting or amending the new concession.

If any other establishment or company is allowed to replace any present establishment or company exploiting natural resources in the Partitioned Zone, this replacement shall not be considered as a new concession, provided that the rights of the other Party shall not be prejudiced.

*Article XXI*

The two Contracting Parties shall undertake to supply the Committee with information, data and documents which it may require to facilitate its task.



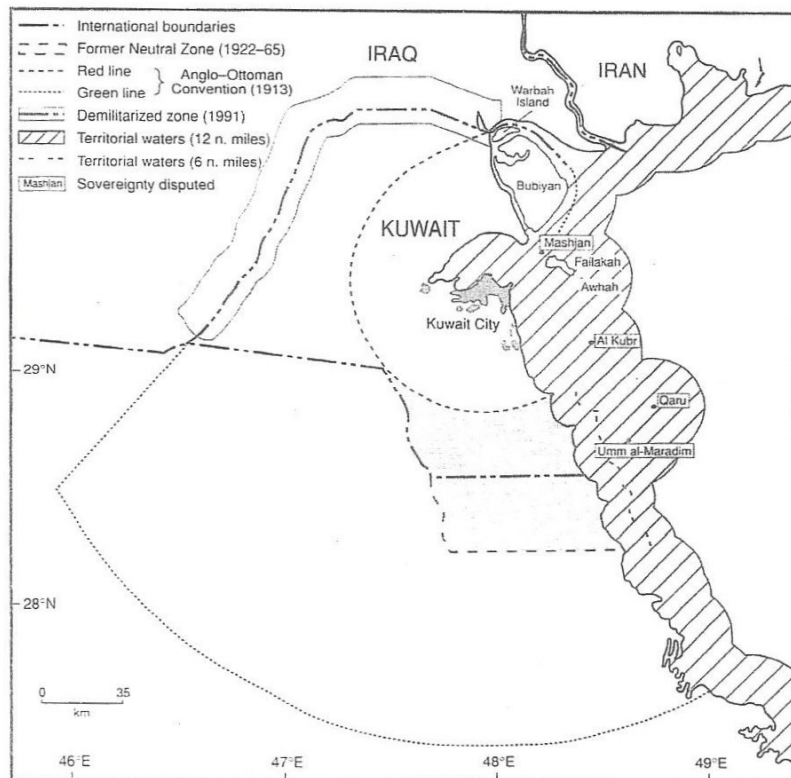


Figure 9.2 Kuwait, showing the 1913 Red and Green lines, the former Kuwaiti-Saudi (Najdi) Neutral Zone (1922-69) and the United Nations demilitarized zone (1991 to the present).

Agreement on the Delimitation of the Offshore and Land Boundaries between the  
Kingdom of Saudi Arabia and Qatar  
4 December 1965

The Government of the Kingdom of Saudi Arabia, represented by His Excellency Sheikh Ahmad Zaki Yamani,  
Minister of Petroleum and Mineral Resources,

And the Government of Qatar, represented by His Highness Sheikh Khalifah Bin Hamad Al Thani, Deputy Ruler and  
Crown Prince,

Desiring to delimit the land and offshore boundaries between their two countries given the great importance of so  
doing, and in view of the links of friendship and bonds of brotherhood prevailing between the two fraternal countries,

And taking into consideration the letter dated 23 Jumada I A.H. 1371 from His Majesty King Faisal Bin Abdul-Aziz Al  
Saud addressed to His Highness Sheikh Ali Bin Abd Allah Al Thani,

Have decided to conclude the following Agreement:

Article 1

Dawhat Salwa shall be divided equally between the two countries on the basis of equidistance from the two coasts. As  
regards indentations, a straight median line shall be adopted to the extent possible.

Article 2

The land boundary between the Kingdom of Saudi Arabia and Qatar starts from a point on the coast of Dawhat Salwa  
at the approximate geographical location of:

Meridian 50° 49' 46";

Parallel 24° 11' 50" .

It extends from this point in a straight line to the highest point at Qarn Abu Wa'il and then proceeds thence in a straight  
line to a point on the south-western edge of the Jawb al-Salamah area at the geographical location of:

Meridian 50° 55' 44";

Parallel 24° 32' 43" .

It extends thence in a straight line to a point on the south-eastern edge of the Jawb al-Salamah area at the geographical  
location of:

Meridian 51° 00' 00";

Parallel 24° 30' 00" .

It extends thence in a straight line to a point on the southern edge of Sabkhat Sawda Nathil at the geographical  
location of:

Meridian 51° 05' 55";

Parallel 24° 28' 16" .

It extends thence in a straight line to a point on the shore of Khawr al-Udayd at the approximate geographical location  
of:

Meridian 51° 16' 02";

Parallel 24° 36' 48" .

All of the points indicated are shown in a preliminary manner on map No. JF 2224 dated December 1961 on the scale  
of 1:200,000 annexed to this Agreement and signed by the two Parties.



Article 3

An international survey company shall be commissioned to carry out a survey and establish on the ground the boundary points and boundary lines between the two countries in accordance with the provisions of this Agreement and to prepare a map of the land and offshore boundaries between the two countries and other related data. After signature by both Parties, this map shall constitute the official map showing the boundaries and shall be annexed to the Agreement as an integral part thereof.

Article 4

The costs of the survey referred to in the previous article shall be shared equally by the two Governments.

Article 5

A joint technical commission shall be formed of two members from each of the two Parties to be entrusted with the preparation of specifications for the survey, the establishment of the boundary points and boundary lines between the two countries in accordance with this Agreement and the supervision of the implementation of the survey and the examination of its results.

Article 6

DONE at Riyadh on 11 Sha'ban A.H. 1385, corresponding to 4 December 1965, in two copies, one to be retained by each State. This Agreement shall be considered to have entered into force after the exchange of instruments of ratification by the two Governments.

For the Kingdom of Saudi Arabia:  
[Signed]

For Qatar:  
[Signed]

**Offshore Boundary Agreement between Abu Dhabi and Dubai**

In the name of God, the Merciful, the Compassionate,

This Agreement on the redefinition of the offshore boundary between the Emirates of Abu Dhabi and Dubai is concluded between His Highness Shaikh Zayid ibn Sultan Al Nahyan, the Ruler of the Emirate of Abu Dhabi, and His Highness Shaikh Rashid ibn Sa'id al-Maktum, the Ruler of the Emirate of Dubai.

Considering that the present offshore boundary between the Emirates of Dubai and Abu Dhabi starts at Ras Hasian on the coast and extends seawards in a straight line in a northwesterly direction passing to the west of the Fateh wells belonging to the Emirate of Dubai;

And considering that the two contracting parties wish to redefine this boundary to the benefit of their countries and the well-being of their peoples;

Agreement and assent has been reached between the two contracting parties in respect of the following:

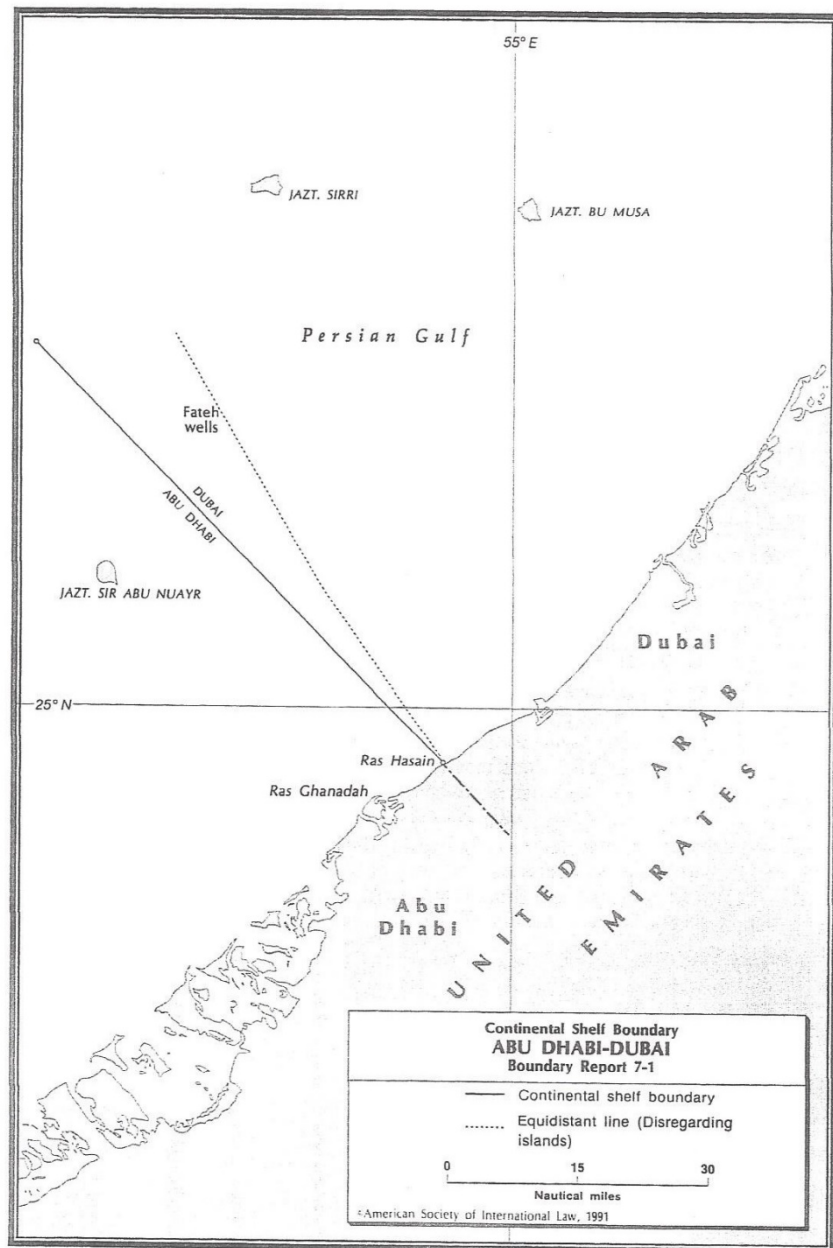
- (1) This boundary shall be redefined in such a way as to annex to the Emirate of Dubai a part of the sea area lying to the west of the aforesaid present boundary and forming a parallelogram whose horizontal base is ten kilometers measured along the coast in a westerly direction from Ras Hasian and whose vertical side is equal in length to the present boundary referred to above, so that the area thus described shall lie to the west of the Fateh wells and extend in a southwesterly direction to the coast.
- (2) The aforesaid area shall become part of the possessions and rights of Dubai.

This Agreement is hereby signed by the two contracting parties at as-Samih on the 18th day of February 1968, corresponding to the 20th day of Dhu al-Qa'dah, 1387 H.

(signed:) Zayid ibn Sultan  
Al Nahyan Ruler of the  
Emirate of Abu Dhabi  
Witnessed by:

(signed:) Rashid ibn Sa'id  
al-Maktum Ruler of the  
Emirate of Dubai

Shaikh Hamdan ibn Muhammad Al Nahyan  
Shaikh Maktum ibn Rashid al-Maktum



I. (i) AGREEMENT CONCERNING THE SOVEREIGNTY OVER THE ISLANDS OF AL-'ARABIYAH AND Farsi AND THE DELIMITATION OF THE BOUNDARY LINE SEPARATING THE SUBMARINE AREAS BETWEEN THE KINGDOM OF SAUDI ARABIA AND IRAN, DONE AT TEHERAN ON 24 OCTOBER 1968<sup>1</sup>

The Royal Government of Saudi Arabia . . . and the Imperial Government of Iran . . .

Desirous of resolving the difference between them regarding sovereignty over the islands of Al-'Arabiyah and Farsi and

Desirous further of determining in a just and accurate manner the boundary line separating the respective submarine areas over which each Party is entitled by international law to exercise sovereign rights,

Now therefore and with due respect to the principles of the law and particular circumstances,

And after exchanging the credentials, have agreed as follows:

*Article 1*

The Parties mutually recognize the sovereignty of Saudi Arabia over the island of Al-'Arabiyah and of Iran over the island of Farsi. Each island shall possess a belt of territorial sea 12 nautical miles in width, measured from the line of lowest low water on each of the said islands. In the area where these belts overlap, a boundary line separating the territorial seas of the two islands shall be drawn so as to be equidistant throughout its length from the lowest low water lines on each island.

*Article 2*

The boundary line separating the submarine areas which appertain to Saudi Arabia from the submarine areas which appertain to Iran shall be a line established as hereinafter provided. Both Parties mutually recognize that each possesses over the sea-bed and subsoil of the submarine areas on its side of the line sovereign rights for the purpose of exploring and exploiting the natural resources therein.

<sup>1</sup> United Nations, *Treaty Series*, vol. 696, p. 212. Came into force on 29 January 1969 by the exchange of the instruments of ratification in accordance with article 5. Official translation signed by both Parties.

## Article 3

The boundary line referred to in article 2 shall be:

(a) Except in the vicinity of Al-'Arabiyah and Farsi, the said line is determined by straight lines between the following points whose latitude and longitude are specified herein below:

Point	North Latitude	East Longitude
1	27° 10.0'	50° 54.0'
2	27° 18.5'	50° 45.5'
3	27° 26.5'	50° 37.0'
4	27° 56.5'	50° 17.5'
5	28° 08.5'	50° 06.5'
6	28° 17.6'	49° 56.2'
7	28° 21.0'	49° 50.9'
8	28° 24.7'	49° 47.8'
9	28° 24.4'	49° 47.4'
10	28° 27.9'	49° 42.0'
11	28° 34.8'	49° 39.7'
12	28° 37.2'	49° 36.2'
13	28° 40.9'	49° 33.5'
14	28° 41.3'	49° 34.3'

(b) In the vicinity of Al-'Arabiyah and Farsi, a line laid down as follows:

At the point where the line described in paragraph (a) intersects the limit of the belt of territorial sea around Farsi, the boundary shall follow the limit of that belt on the side facing Saudi Arabia until it meets the boundary line set forth in article 1 which divides the territorial seas of Farsi and Al-'Arabiyah; thence it shall follow that line easterly until it meets the limit of the belt of territorial sea around Al-'Arabiyah; thence it shall follow the limit of that belt on the side facing Iran until it intersects again the line described in paragraph (a).

The map prepared by the A. M. Service Corps of Engineers U.S. Army compiled in 1966 was used and shall be used as the basis for the measurement of the co-ordinates described above and the boundary line is illustrated in a copy of the said map signed and attached hereto.

## Article 4

Each Party agrees that no oil drilling operations shall be conducted by or under its authority, within a zone extending five hundred (500) meters in width in the submarine areas on its side of the boundary line described in article 3, said zone to be measured from said boundary.

## (ii) EXCHANGES OF LETTERS

## 1a

Your Excellency:

With reference to the offshore boundary agreement signed by us today (hereinafter referred to as "the Agreement") on behalf of our respective

Governments, I have the honour to propose the following technical arrangement to facilitate the determination of geographical locations offshore in the Marjan-Fereydoun area:

As soon as possible after the entry into force of the Agreement a joint technical committee of four members shall be established composed of two experts appointed by each Government. This committee shall be charged with establishing agreed positions defined by co-ordinates of latitude and longitude with reference to the map attached to the Agreement, for the following offshore at which tangible markers of various kinds already exist:

On the Iranian Side:

1. The well site known as Fereydoun 3
2. The well site known as Fereydoun 2

On the Saudi Arabian Side:

3. The well site known as Fereydoun 7, or in case there shall be no tangible markers therein, the well site known as Marjan 1. It is understood that whenever a new well is drilled on the Saudi Arabian side with tangible markers on it and conveniently close to the boundary line, such a well shall also be included in the reference points, thus making the number of the reference points four all together.

The positions for these points fixed by the committee shall be regarded as accepted by both Governments if neither Government objects within one month after the committee has presented its reports, which reports shall be submitted to both Governments on the same date.

Thereafter, for all purposes arising under the Agreement positions for oil operations in the Marjan-Fereydoun area carried on under the authority of either Government shall be established by reference to these points in accordance with standard survey techniques.

If the foregoing proposal is acceptable to Your Excellency, this letter and your reply to that effect shall constitute an agreement between our respective Governments, effective on the date on which the Agreement comes into force.

With assurance of my high esteem.

Teheran on 2nd Sha'ban 1388 corresponding to 2nd Aban 1347 and 24th October 1968.

For the Royal Government of Saudi Arabia:

Ahmed ZAKI YAMANI  
Minister of Petroleum  
and Mineral Resources

His Excellency Dr. Manoochehr Eghbal  
Chairman of the Board and General Managing  
Director of the National Iranian Oil Company  
and Representative of the Imperial Government of Iran

## IIa

Your Excellency:

I have the honour to inform Your Excellency that I have received Your Excellency's letter of the following text:

[See letter Ia]

I have the pleasure to convey to Your Excellency my Government's approval of the contents of your letter, the text of which is hereabove stated, considering that the said letter and my reply thereto shall constitute an agreement between our respective Governments, effective on the date on which the Agreement comes into force.

With renewed assurance of my high esteem.

Teheran on 2nd Sha'ban 1388 corresponding to 2nd Aban 1347 and 24th October 1968.

For the Imperial Government of Iran:

Dr. Manoochehr EGHBAL  
Chairman of the Board and General  
Managing Director of the  
National Iranian Oil Company

His Excellency Ahmed Zaki Yamani  
Minister of Petroleum and Mineral Resources  
Representative of the Royal Government  
of Saudi Arabia

## Ib

Your Excellency:

With reference to the offshore boundary agreement signed by us today on behalf of our respective Governments, I have the honour to propose, for the more effective implementation of this Agreement (hereinafter referred to as "the Agreement") the following understandings:

(a) The oil drilling operations which are prohibited by article 4 of the Agreement within the zone therein described (hereinafter referred to as "the Prohibited Area") shall include exploitation carried out directly from the Prohibited Area and shall also extend to all drilling operations which could be carried out within the Prohibited Area from installations which are themselves located outside it.

The term "oil drilling operations" as used in article 4 of the Agreement shall mean drilling operations for oil and/or gas.

Our two Governments shall ensure that the wells drilled in the immediate vicinity of the Prohibited Area shall be vertical wells, however, when a deviation is technically inevitable at a reasonable cost, such a deviation shall not be deemed as encroachment on the Agreement, provided that the



deviation is within the minimum range of good drilling practice and further provided that the party concerned does not contemplate, by such deviation, the violation of the provisions set forth in the Agreement and this letter.

Should our two Governments mutually agree that gas injection and/or drilling an observation well is technically beneficial and advisable for the Marjan-Fereydoun reservoir, our two Governments shall agree on the location, the conducting of drilling the wells and their operations in the Prohibited Area for the sole purpose specified in this paragraph, provided that the wells to be drilled shall be conducted by each Government, directly or through its authorized agent, on its respective side of the Prohibited Area under the terms and conditions to be agreed upon by our two Governments.

(b) Our two Governments shall, directly or through authorized agents, exchange with each other all obtained directional survey information during the course of drilling operations carried out as from the effective date of the Agreement within two kilometers of the boundary line. This exchange shall be made on a reciprocal and continuous basis.

(c) Each Government shall ensure that the companies operating under its respective authority shall not carry out operations that may, for technical inconsistency with the conservation rules according to sound oil industry practice, be considered harmful to the oil and gas reservoir in the Marjan-Fereydoun area.

This letter and Your Excellency's reply thereto shall constitute an agreement between our respective Governments, to become effective on the date on which the Agreement enters into force.

With renewed assurance of my high esteem.

Teheran on 2nd Sha'ban 1388 corresponding to 2nd Aban 1347 and 24th October 1968.

For the Royal Government of Saudi Arabia:

Ahmed ZAKI YAMANI  
Minister of Petroleum  
and Mineral Resources

His Excellency Dr. Manoochehr Eghbal  
Chairman of the Board and General Managing  
Director of the National Iranian Oil Company  
and Representative of the Imperial Government of Iran

IIb

Your Excellency:

I have the honour to inform Your Excellency that I have received Your Excellency's letter of the following text:

[See letter IIa]



I have the pleasure to convey to Your Excellency my Government's approval of the contents of your letter, the text of which is hereabove stated, considering that the said letter and my reply thereto shall constitute an agreement between our respective Governments, effective on the date on which the Agreement comes into force.

With renewed assurance of my high esteem.

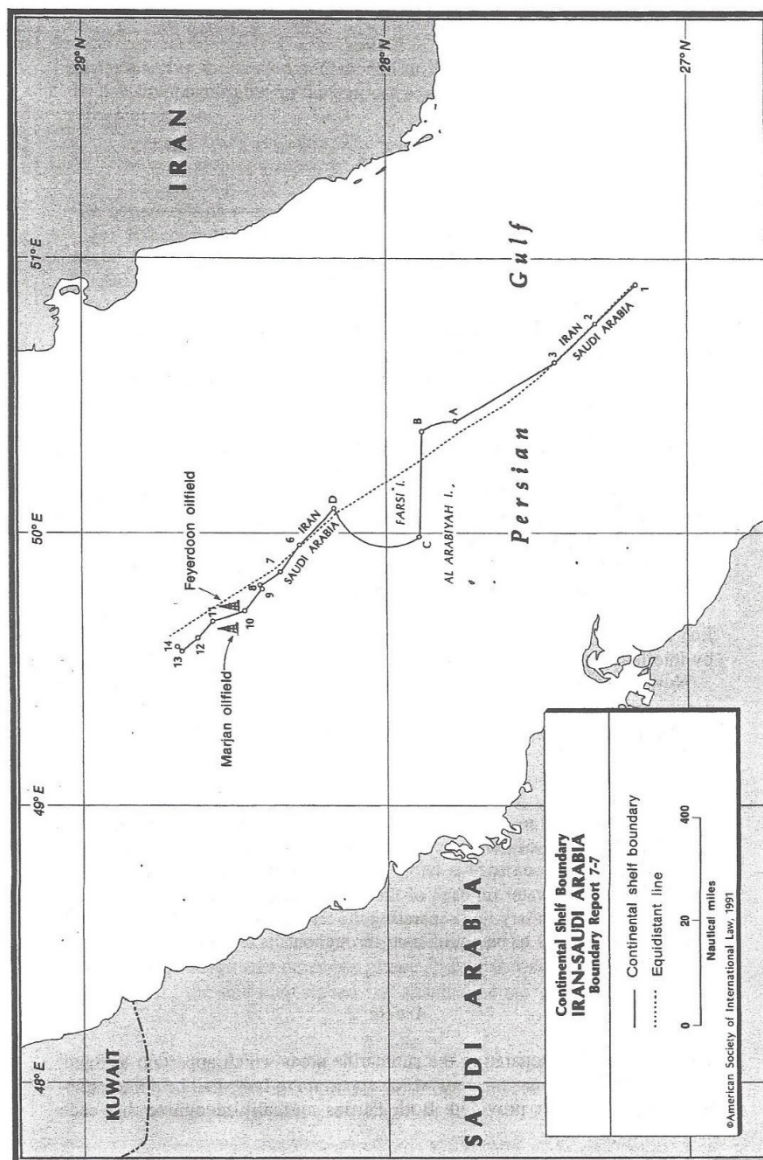
Teheran on 2nd Sha'ban 1388 corresponding to 2nd Aban 1347 and 24th October 1968.

For the Imperial Government of Iran:

Manoochehr EGHBAL  
Chairman of the Board and  
General Managing Director of the  
National Iranian Oil Company

His Excellency Shaikh Ahmed Zaki Yamani  
Minister of Petroleum and Mineral Resources  
and Representative of the Royal Government  
of Saudi Arabia





3. AGREEMENT ON SETTLEMENT OF MARITIME BOUNDARY LINES AND SOVEREIGN RIGHTS OVER ISLANDS BETWEEN QATAR AND ABU DHABI. SIGNED ON 30 MARCH 1969<sup>1</sup>

Recognizing the cordial and fraternal relations that exist between the two sister Arab States, and desirous of settling maritime boundary lines and sovereign rights over islands on the basis of their mutual interests, the two Contracting Parties have agreed as follows:

- (1) That "Dina" Island is part of the territory of Abu Dhabi;
- (2) That the islands of "Lashat" and "Shraho" are part of the territory of Qatar;
- (3) That both States will have no further national claims against each other in islands and waters beyond the maritime boundary lines herein agreed to.
- (4) That the maritime boundary lines referred to in paragraph (3) above are as follows:

(a) A straight line between Point A at:

Lat.	25	31	50
Long.	53	02	05

and point B, "Bir Elbundug", at:

Lat.	25	05	54,79
Long.	52	36	50,98

(b) A straight line between point B (described above), and point C, at:

Lat.	24	48	40
Long.	52	16	20

(c) A straight line from point C (described above) to point D (at Bab Khor Eladid at the territorial sea boundary) at:

Lat.	24	48	40
Long.	52	16	20

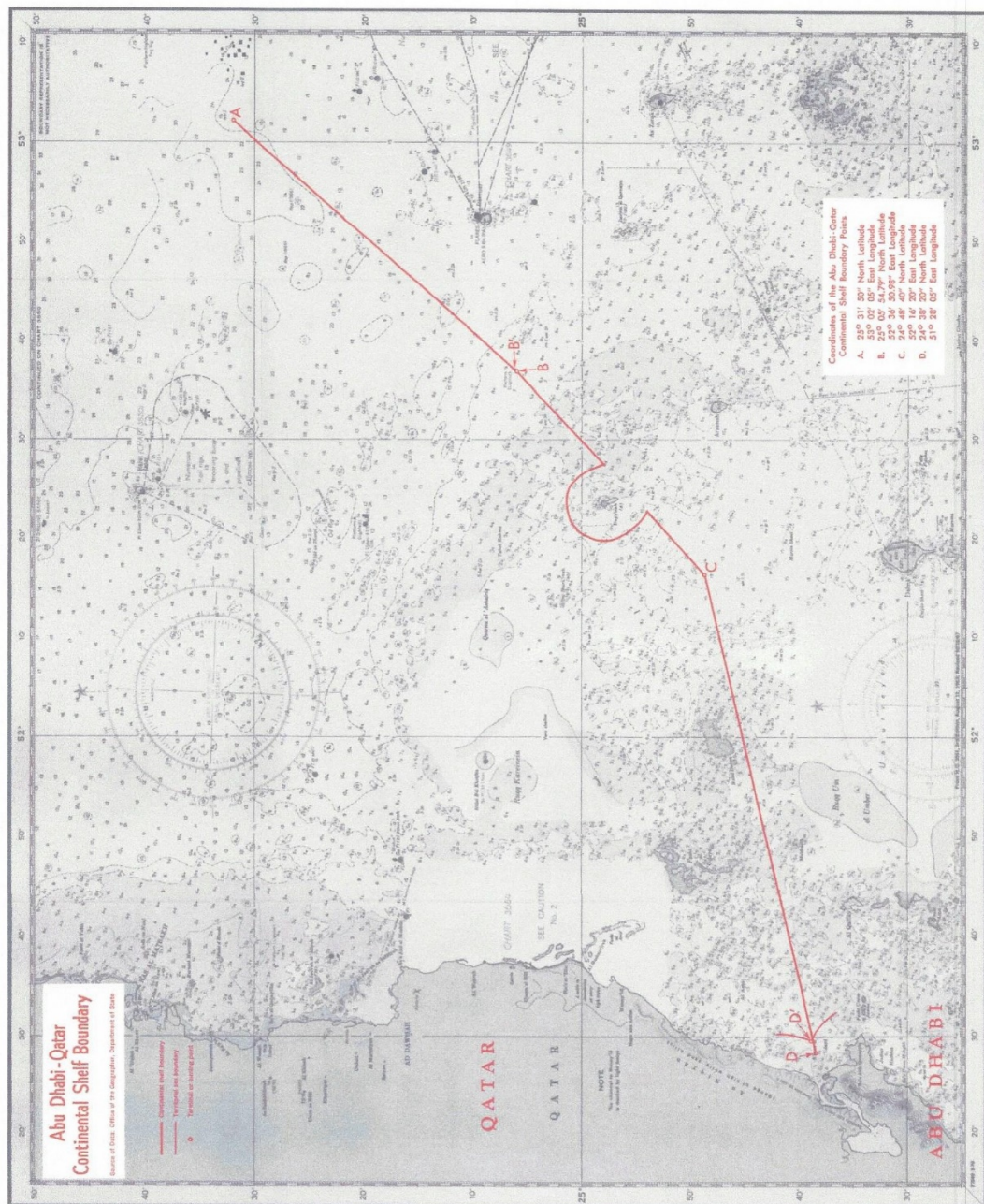
(5) That the above points and lines shall as soon as possible be drawn in a small maritime boundary chart in duplicate, each to be signed by both Contracting Parties;

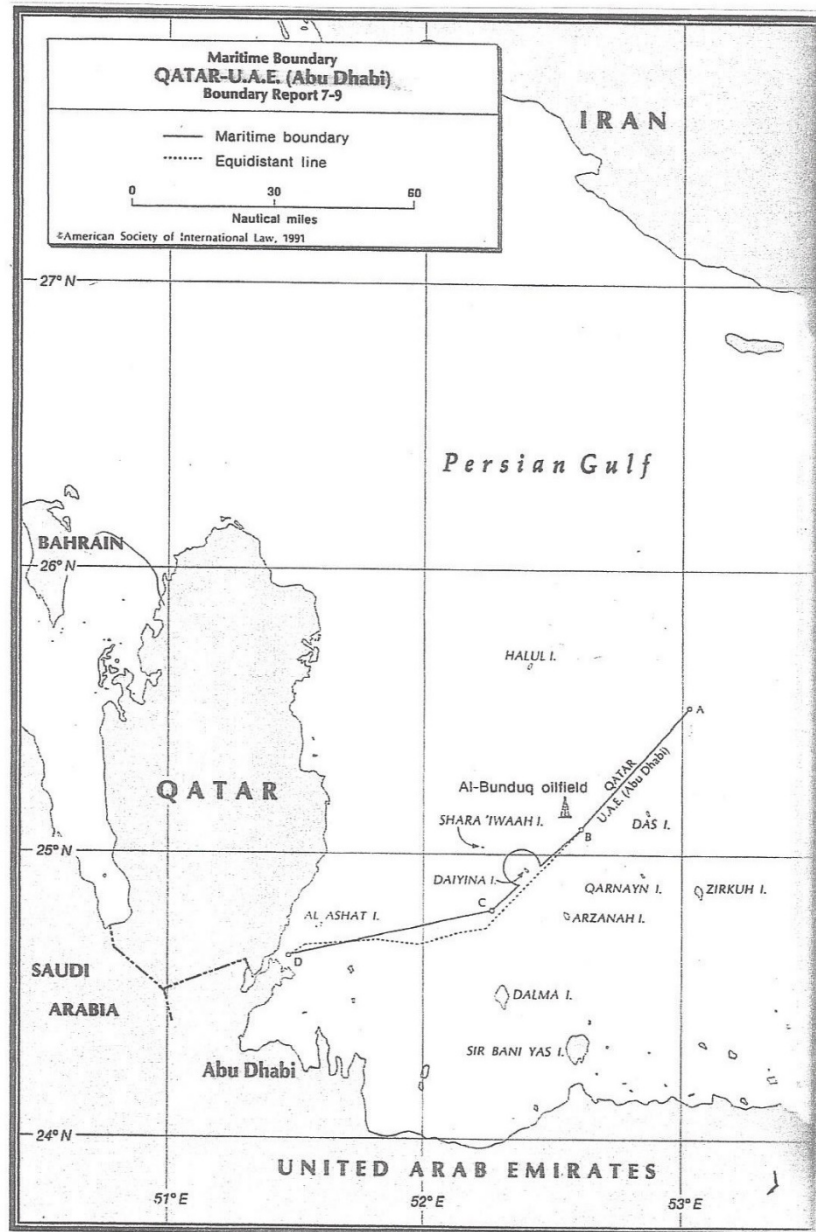
(6) That the Contracting Parties will have equal rights of ownership over "Hagl Elbundug" and agreed to consult each other in all matters concerning its exploitation;

(7) That "Hagl Elbundug" shall be exploited by ADMA (Abu Dhabi Marine Areas Co.) in accordance with the terms of the agreements between the Company and the Ruler of Abu Dhabi. All revenues, profits and benefits derived from such exploitation shall be divided on equal shares by the Governments of Qatar and Abu Dhabi.

<sup>1</sup> Unofficial English translation supplied by the Permanent Representative of State of Qatar to the United Nations in a letter of 27 July 1972.







5. AGREEMENT CONCERNING THE BOUNDARY LINE DIVIDING THE CONTINENTAL SHELF BETWEEN IRAN AND QATAR. DONE AT DOHA ON 20 SEPTEMBER 1969<sup>1</sup>

The Imperial Government of Iran and the Government of Qatar desirous of establishing in a just, equitable and precise manner the boundary line between the respective areas of Continental Shelf over which they have sovereign rights in accordance with international law, have agreed as follows:

*Article 1*

The Boundary Line dividing the Continental Shelf lying between the territory of Iran on the one side and that of Qatar on the other side shall consist of geodetic lines between the following points in the sequence given below:

Point (1) is the westernmost point on the westernmost part of the northern boundary line of the continental shelf appertaining to Qatar formed by a line of geodetic azimuth 278 degrees 14 minutes 27 seconds west from Point 2 below.

	<i>Lat. N</i>	<i>Long. E</i>
Point (2)	27° 00' 35"	51° 23' 00"
Point (3)	26° 56' 20"	51° 44' 05"
Point (4)	26° 33' 25"	52° 12' 10"
Point (5)	26° 06' 20"	52° 42' 30"
Point (6)	25° 31' 50"	53° 02' 05"

*Article 2*

If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, extends across the Boundary Line set out in Article 1 of this Agreement and the part of such structure or field which is situated on one side of that Boundary Line could be exploited wholly or in part by directional drilling from the other side of the Boundary Line, then:

(a) No well shall be drilled on either side of the Boundary Line as set out in Article 1 so that any producing section thereof is less than 125 metres

<sup>1</sup> United Nations, *Treaty Series*, vol. 787, no. 11197. Entered into force on 10 May 1970, in accordance with Article 5.

from the said Boundary Line, except by mutual agreement between the two Governments;

(b) Both Governments shall endeavour to reach agreement as to the manner in which the operations on both sides of the Boundary Line could be coordinated or unitized.

#### Article 3

The Boundary Line referred to in Article 1 herein has been illustrated on the British Admiralty Chart No. 2837 which is annexed to this Agreement.

The said Chart has been made in duplicate and signed by the representatives of both Governments each of whom has retained one copy thereof.

#### Article 4

Nothing in this Agreement shall affect the status of the superadjacent waters or airspace above any part of the Continental Shelf.

#### Article 5

A. The present agreement will be ratified and the instruments of ratification will be exchanged as quickly as possible in Doha (Qatar).

B. The present agreement will be implemented beginning with the date of the exchange of the instruments of ratification.

### 6. AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF INDONESIA ON THE DELIMITATION OF THE CONTINENTAL SHELVES BETWEEN THE TWO COUNTRIES. DONE AT KUALA LUMPUR ON 27 OCTOBER 1969<sup>1</sup>

#### Article 1

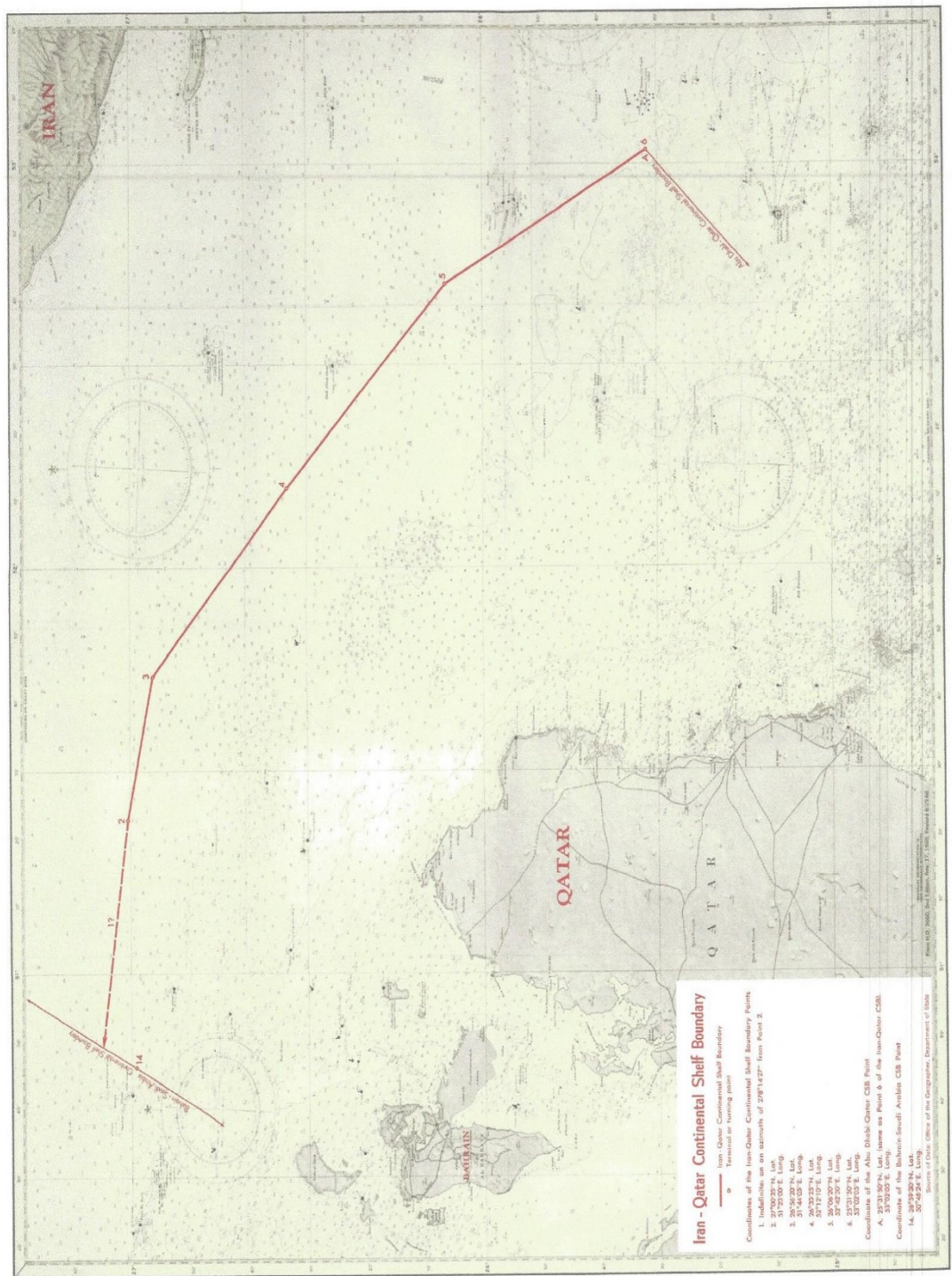
(1) The boundaries of the Malaysian and the Indonesian continental shelves in the Straits of Malacca and the South China Sea are the straight lines connecting the points specified in column 1 below whose coordinates are specified opposite those points in columns 2 and 3 below:-

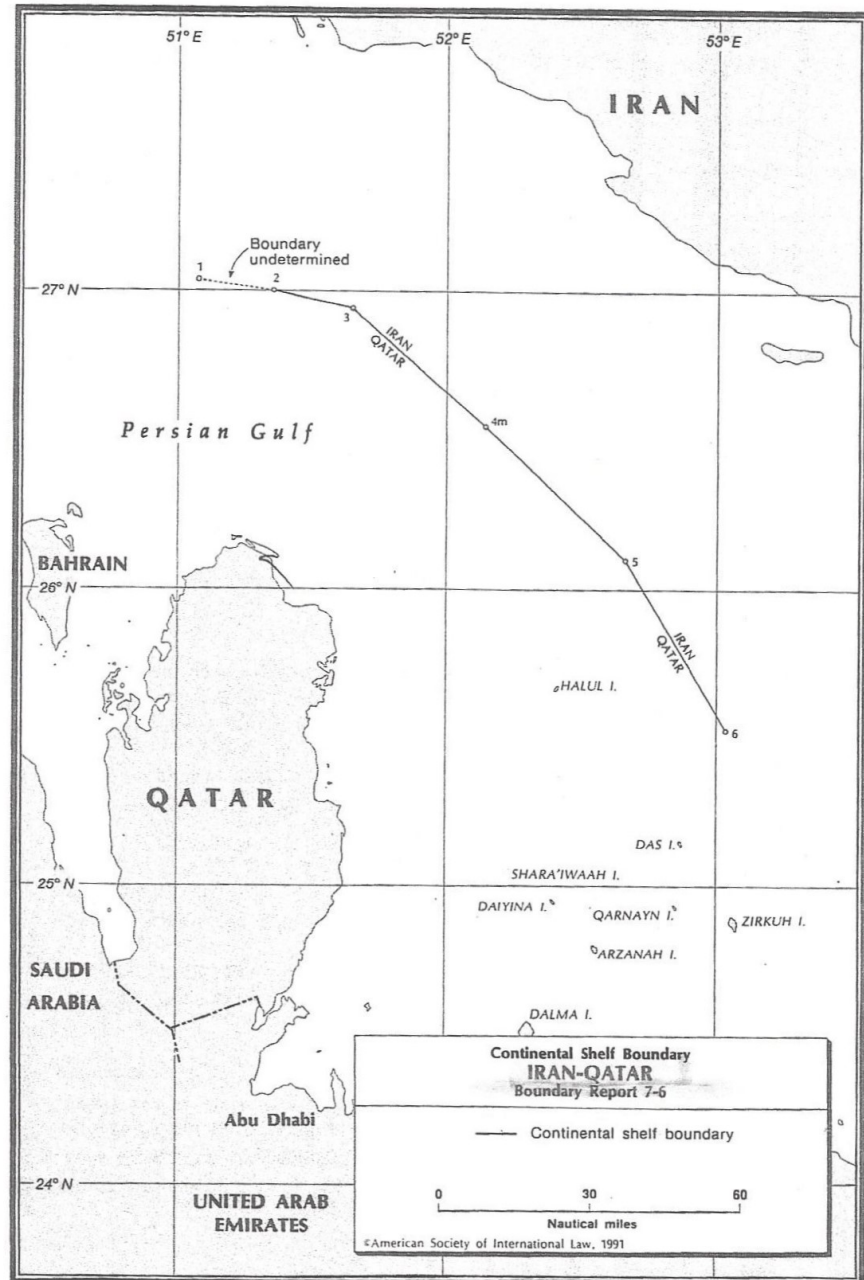
##### A. In the Straits of Malacca:

(1) Point	(2) Longitude E.	(3) Latitude N.
1.	98° 17'.5	05° 27'.0
2.	98° 41'.5	04° 55'.7
3.	99° 43'.6	03° 59'.6
4.	99° 55'.0	03° 47'.4
5.	101° 12'.1	02° 41'.5
6.	101° 46'.5	02° 15'.4
7.	102° 13'.4	01° 55'.2
8.	102° 35'.0	01° 41'.2

<sup>1</sup> Entered into force on 7 November 1969, in accordance with Article VII. Text provided by the Permanent Representative of Malaysia to the United Nations in a note verbale of 14 February 1972.







11. AGREEMENT CONCERNING DELIMITATION OF THE CONTINENTAL SHELF BETWEEN BAHRAIN AND IRAN. SIGNED AT BAHRAIN ON 17 JUNE 1971<sup>2</sup>

The Imperial Government of Iran and the Government of Bahrain desirous of establishing in a just equitable and precise manner the boundary line between the respective areas of the continental shelf over which they have sovereign rights in accordance with international law, have agreed as follows:

<sup>1</sup> *Infra* DIVISION IV, SUBDIVISION B, 19.

<sup>2</sup> English text provided by the Permanent Representative of Iran to the United Nations in a note verbale of 9 August 1972.

#### Article 1

The line dividing the continental shelf lying between the territory of Iran on the one side and the territory of Bahrain on the other side shall consist of geodetic lines between the following points in the sequence hereinafter set out:

Point 1. Is the easternmost point on the easternmost part of the Northern boundary line of the continental shelf appertaining to Bahrain as formed by the intersection of a line starting from the point having the latitude of 27 degrees, 00 minutes, 35 seconds North and longitude 51 degrees, 23 minutes, 00 seconds East, and having a geodetic azimuth of 278 degrees, 14 minutes, 27 seconds, with a boundary line dividing the continental shelf appertaining to Bahrain and Qatar, thence:

	Lat. north	Long. East
Point 2.	27 deg. 02 min. 46 sec.	51 deg. 05 min. 54 sec.
Point 3.	27 deg. 06 min. 30 sec.	50 deg. 57 min. 00 sec.
Point 4.	27 deg. 10 min. 00 sec.	50 deg. 54 min. 00 sec.

#### Article 2

If any single geological petroleum structure or petroleum field, or any single geological structure or any other mineral extends across the boundary line set out in article 1 of this Agreement and the part of such structure or field which is situated on one side of that boundary line could be exploited wholly or in part by directional drilling from the other side of the boundary line then:

(a) No well shall be drilled on either side of the boundary line as set out in article 1 so that any producing section thereof is less than 125 metres from the said boundary line except by mutual agreement between the Imperial Government of Iran and the Government of Bahrain.

(b) If the circumstances considered in this Article shall arise both Parties hereto shall use their best endeavours to reach agreement as to the manner in which the operations on both sides of the boundary line could be co-ordinated or unitized.

#### Article 3

The boundary line referred to in article 1 hereof has been illustrated on the British Admiralty chart No. 2847 which is annexed hereto and has been thereon marked in red.

#### Article 4

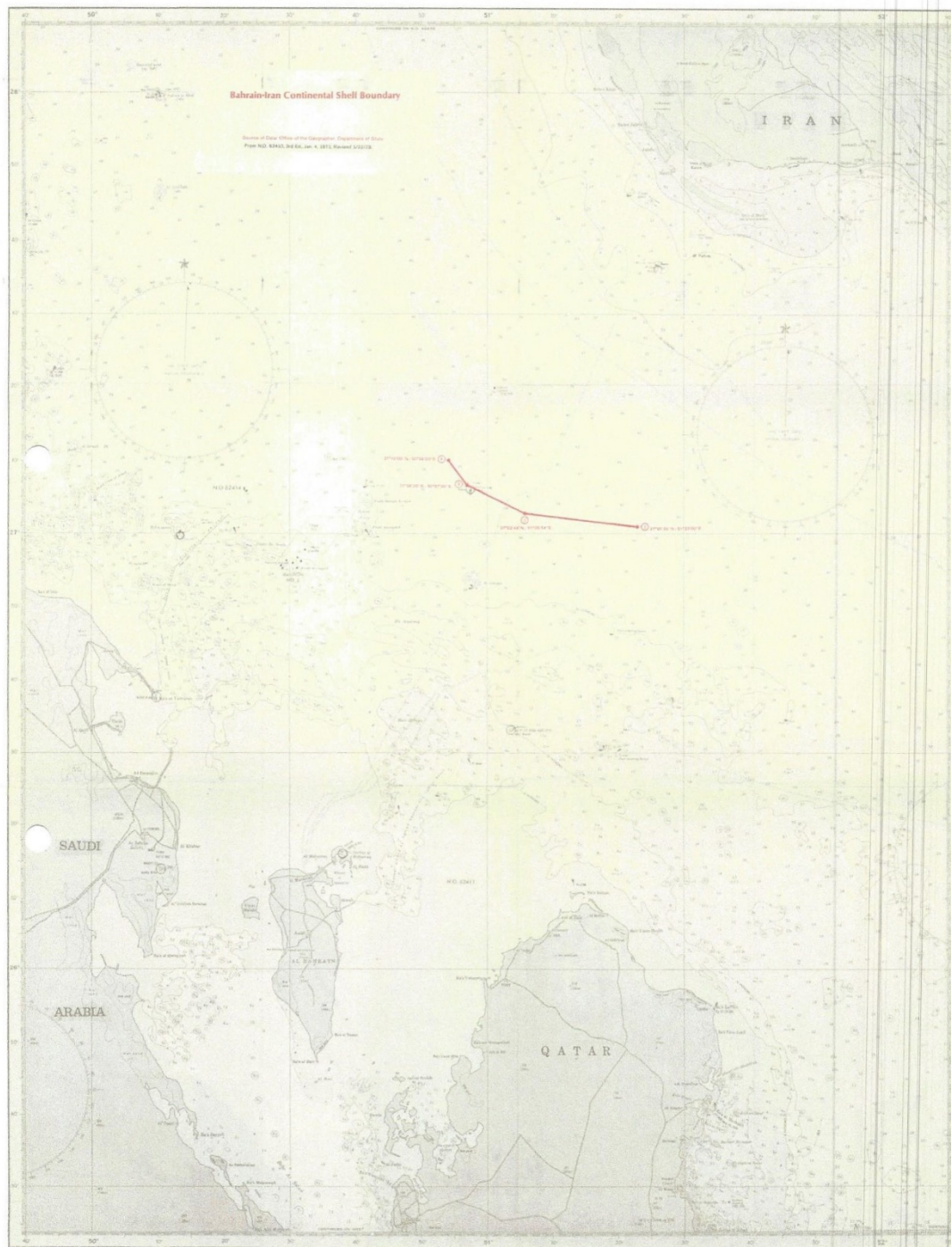
Nothing in this Agreement shall affect the status of the superjacent waters or airspace above any part of the continental shelf.

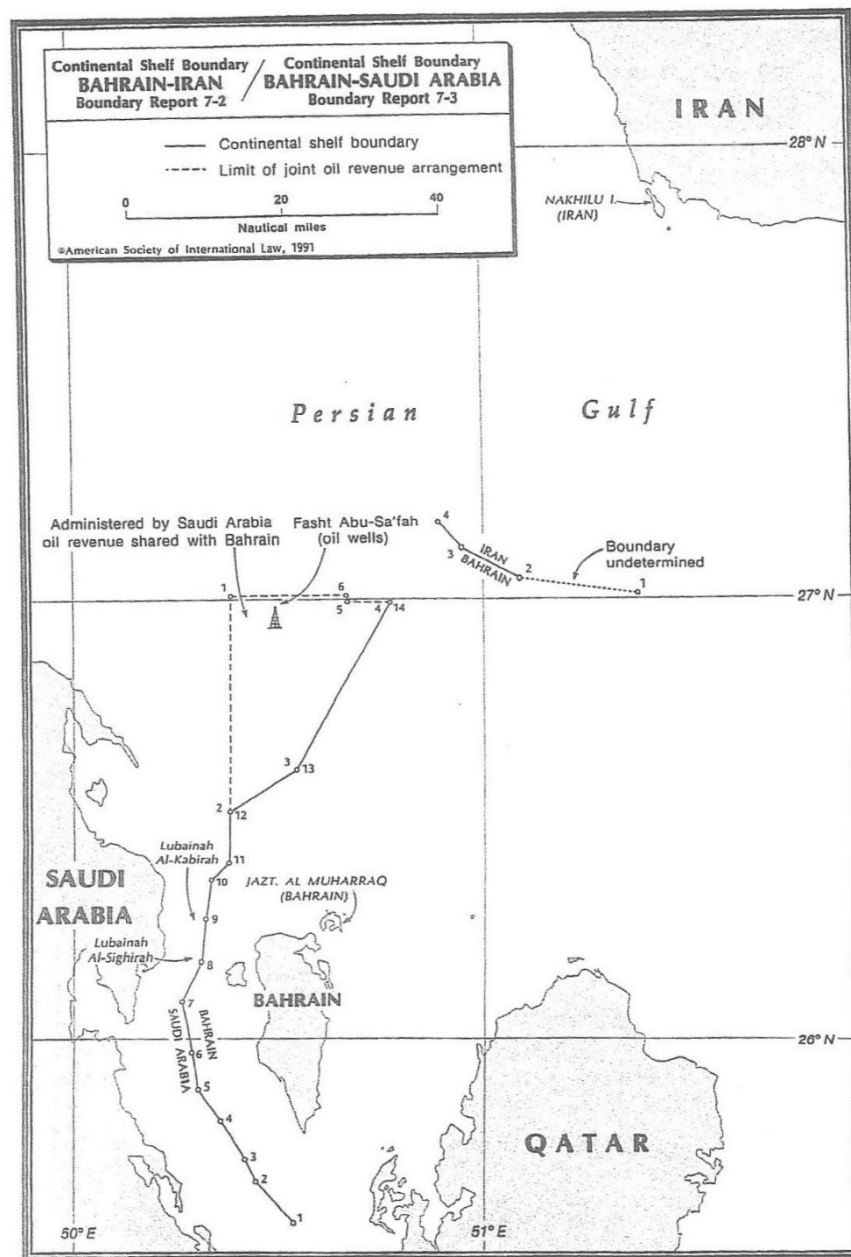
#### Article 5

(a) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Teheran.

(b) This Agreement shall enter into force on the date of the exchange of instruments of ratification.







2. AGREEMENT CONCERNING DELIMITATION OF THE CONTINENTAL SHELF BETWEEN IRAN AND OMAN, DONE AT TEHERAN ON 25 JULY 1974<sup>1</sup>

The Government of the Sultanate of Oman  
and

<sup>1</sup> Text provided by the Permanent Representative of Oman to the United Nations in a note verbale of 17 May 1977.

# The Imperial Government of Iran

Desirous of establishing in a just, equitable and precise manner the boundary line between the respective areas of the continental shelf over which they have sovereign rights in accordance with international law, and after having exchanged credentials, found in good and due form, have agreed as follows:

## Article 1

The line dividing the continental shelf lying between the territory of Iran on the one side and the territory of Oman on the other side shall consist of geodetic lines between the following points in the sequence hereinafter set out:

Point (1) is the most western point which is the intersection of the geodetic line drawn between point (0) having the co-ordinates of 55° 42' 15" E 26° 14' 45" N and point (2) having the co-ordinates of 55° 47' 45" E 26° 16' 35" N with the lateral offshore boundary line between Oman and Ras Al-Khaimah.

Point (2) .....	55	47	45	26	16	35	
Point (3) .....	55	52	15	26	18	50	
Point (4) .....	56	06	45	26	28	40	
Point (5) .....	56	08	35	26	31	05	
Point (6) .....	56	10	25	26	32	50	
Point (7) .....	56	14	30	26	35	25	
Point (8) .....	56	16	30	26	35	35	
Point (9) .....	56	19	40	26	37	00	W. Intersection of larac 12 m.
Point (10) .....	56	33	00	26	42	15	E. Intersection of larac 12 m.
Point (11) .....	56	41	00	26	44	15	
Point (12) .....	56	44	00	26	41	35	
Point (13) .....	56	45	15	26	39	40	
Point (14) .....	56	47	45	26	35	15	
Point (15) .....	56	47	30	26	25	15	
Point (16) .....	56	48	05	26	22	00	
Point (17) .....	56	47	50	26	16	30	
Point (18) .....	56	48	00	26	11	35	
Point (19) .....	56	50	15	26	03	05	
Point (20) .....	56	49	50	25	58	05	
Point (21) .....	56	51	30	25	45	20	

Point (22) is the most southern point located at the intersection of the geodetic demarcation line drawn from point (21) (specified above at an azimuth angle of 190° 00' 00" and of the lateral offshore boundary line between Oman and Sharjah.

## Article 2

If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral extends across



the boundary line set out in article 1 of this agreement and the part of such structure or field which is situated on one side of that boundary line could be exploited wholly or in part by directional drilling from the other side of the boundary line then:

(a) No well shall be drilled on either side of the boundary line as set out in article 1 so that any producing section thereof is less than 125 metres from the said boundary line except by mutual agreement between the two contracting parties.

(b) If the circumstances considered in this article shall arise both parties hereto shall use their best endeavours to reach agreement as to the manner in which the operations on both sides of the boundary line could be co-ordinated or unitized.

#### *Article 3*

The boundary line referred to in article 1 herein has been illustrated on the British Admiralty Chart No. 2888, 1962 edition with small corrections through 1974, and with the ellipsoid used in said chart, which is annexed to this agreement.

The said Chart has been made in duplicate and signed by the representatives of both parties each of whom has retained one copy thereof.

#### *Article 4*

Nothing in this agreement shall affect the status of the superjacent waters or airspace above any part of the Continental Shelf.

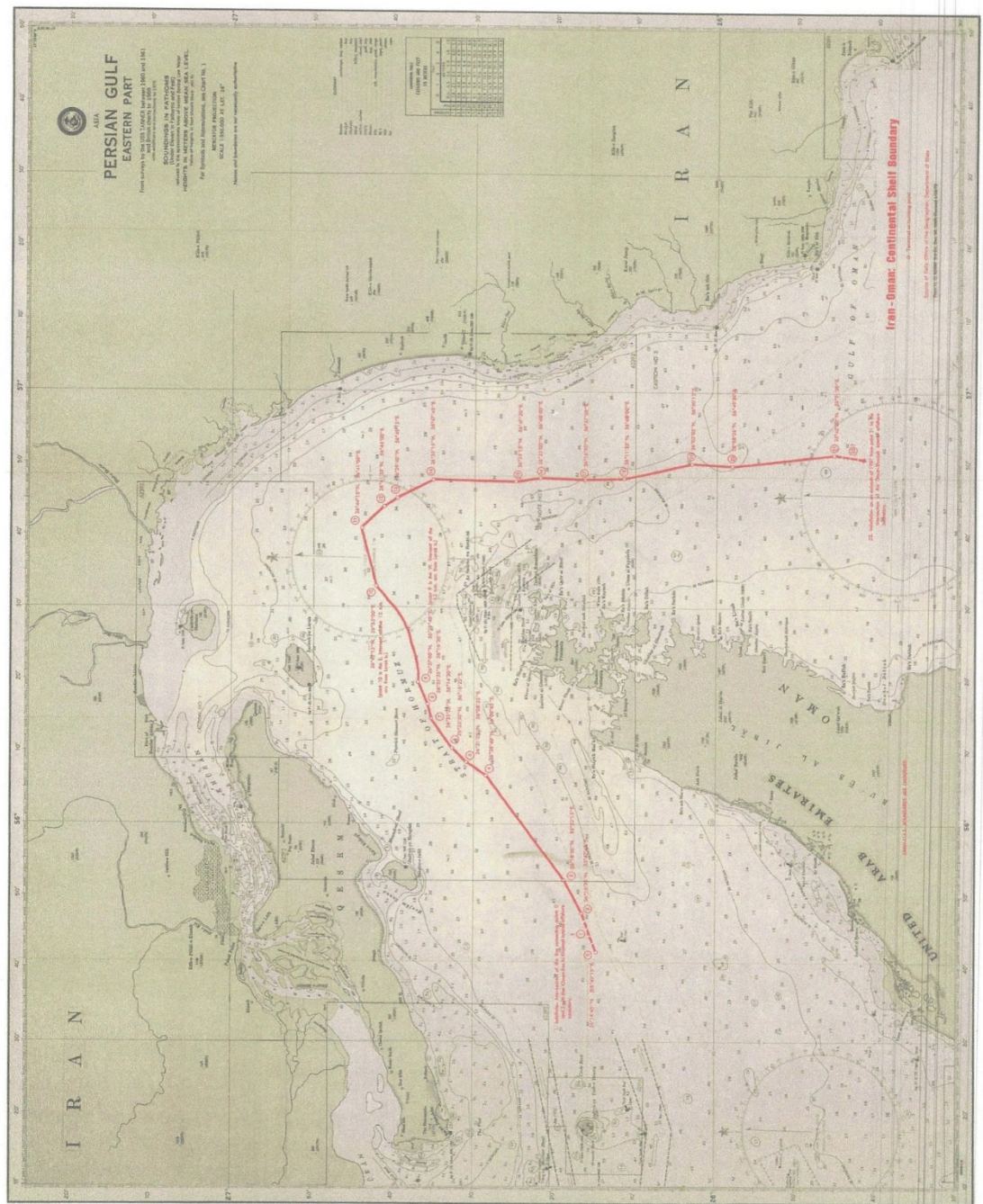
#### *Article 5*

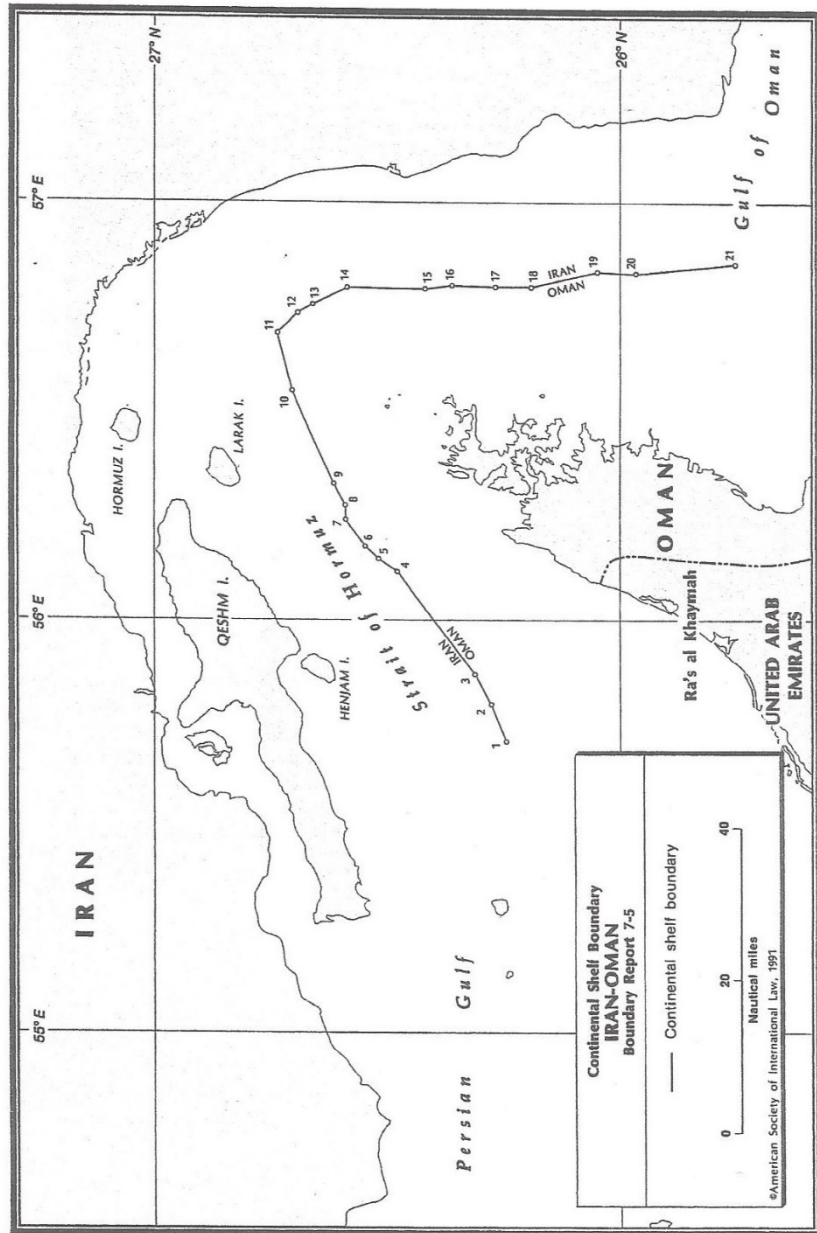
(a) This agreement shall be ratified and the instruments of ratification shall be exchanged at Muscat, Sultanate of Oman.

(b) This agreement shall enter into force on the date of the exchange of instruments of ratification.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this agreement.

DONE in duplicate at Tehran the 25th day of July 1974, corresponding to the 3rd day of Mardad 1353 corresponding to the 5th day of Rajab 1394, in Arabic, Persian and English languages, all texts being equally authoritative.







The Imperial Government of Iran and the Government of the State of the United Arab Emirates (Dubai) signed an agreement on August 31, 1974, regarding the delimitation of their continental shelf boundary. The agreement was ratified by Iran on March 15, 1975, but it has yet to be ratified by the U.A.E. Neither government is a party to the 1958 Geneva Convention on the Continental Shelf.

The Agreement Concerning the Boundary Line Dividing Parts of the Continental Shelf Between Iran and the United Arab Emirates states that:

The Government of the State of U.A.E. and the Imperial Government of Iran desirous of establishing in a just, equitable and precise manner the boundary line between the respective areas of continental shelf over which they have sovereign rights in accordance with international law.

Have agreed as follows:

#### **Article 1**

The boundary line dividing the continental shelf lying between the territory of U.A.E. on one side and that of Iran on the other side, except in the vicinity of Sirri Island, shall consist of geodetic lines between the following points:

Point 1: 54°05'16" long. East 25°38'13" lat. North to  
 Point 2: 54°26'18" long. East 25°39'55" lat. North to  
 Point 3: 54°30'25" long. East 25°41'35" lat. North From this point the boundary line coincides with the southern 12-mile limit of the territorial waters of the Sirri Island: to  
 Point 4: 54°44'50" long. East 25°47'20" lat. North to  
 Point 5: 54°45'07" long. East 25°47'30" lat. North

#### **Article 2**

If any single geological Petroleum structure or Petroleum field, or any single geological structure or field of any other mineral deposit extends across the boundary line set out in Article (1) of this Agreement and the part of such structure or field which is situated on one side of that Boundary line could be exploited wholly or in part by directional drilling from the other side of the Boundary line then:

- (a) No well shall be drilled on either side of the Boundary line as set out in Article (1) so that any producing section thereof is less than 125 meters from the said Boundary line, except by mutual agreement between the two Governments.
- (b) Both Governments shall endeavour to reach agreement as to the manner in which the operations on both sides of the Boundary line could be coordinated or unitized.

The Geographer  
 Office of the Geographer  
 Bureau of Intelligence and Research

**Article 3**

The Boundary line referred to in Article (1) herein has been illustrated on the British Admiralty Chart No: 2837 which is annexed to this Agreement.

**Article 4**

Nothing in this Agreement shall affect the status of the superajacent [sic] waters or airspace above any party of the Continental Shelf.

**Article 5**

(a) This Agreement shall be ratified and the instruments of ratification shall be exchanged at .....as soon as possible.

(b) This Agreement shall enter into force on the date of the exchange of instruments of ratification.

In witness thereof the undersigned being duly authorized by their respective Governments, have signed the present Agreement.

Done in duplicate at Tehran the 24 Rajah 1394 corresponding to the 13 August 1974 in the Arabic, Persian, and English languages, all texts being equally authoritative.

For the State of U.A.E.

For the Imperial Government of Iran

**ANALYSIS**

The continental shelf boundary between Iran and the U.A.E. was plotted on U.S. Naval Oceanographic Charts 62390 and 62400,

The boundary extends for a distance of 39.25 nautical miles and it has five turning or terminal points. The distances between points 1-2, 2-3, 3-4, and 4-5 are 19.18 n. miles, 4.60 n. miles, 14.29 n. miles, and 1.18 n. miles respectively. The depth of the water in this area of the Persian Gulf is approximately 30 fathoms (54.9 meters).

The boundary is not based on the equidistance principle; from four of the five turning or terminal points the boundary is nearer to the Irani Island of Sirri than to any U.A.E. territory. From point 3-4 the shelf boundary coincides with Sirri's 12-nautical-mile territorial sea (the .22 n. mile discrepancy found when measuring the territorial sea—refer to the table—may be a result of the particular chart or projection used).





## [TRANSLATION]

AGREEMENT<sup>1</sup> BETWEEN THE KINGDOM OF SAUDI ARABIA AND  
THE UNITED ARAB EMIRATES ON THE DELIMITATION OF  
BOUNDARIES

His Majesty King Faisal Bin Abdul-Aziz al Saud, King of Saudi Arabia,  
And His Highness Sheikh Zayed Bin Sultan Al Nahyan, President of the United  
Arab Emirates,

In pursuance of the principles of the Holy Shariah professed by the Islamic  
Community, proceeding from the spirit of Islamic solidarity that embraces the Ara-  
bian Peninsula, and on the basis of the bonds of amity between them, the links of  
brotherhood between their fraternal peoples and the relationship of neighbourliness  
existing between their two countries,

And in view of the desire of each of the two States to delimit the offshore and  
land boundaries between their territories in a definitive manner in a spirit of Islamic  
brotherhood and Arab fraternity,

The High Contracting Parties have agreed as follows:

*Article 1*

The land boundary separating the territory of the Kingdom of Saudi Arabia and  
the territory of the United Arab Emirates is the line delimited in accordance with the  
provisions of this Agreement.

*Article 2*

The land boundary between the Kingdom of Saudi Arabia and the United Arab  
Emirates starts from point (a) on the coast of the Arabian Gulf at the approximate  
geographical location of:

Parallel 24° 14' 58" north;  
Meridian 51° 35' 26" east.

It extends from this point in a straight line proceeding in a southerly direction  
to point (b) at the geographical location of:

Parallel 24° 07' 24" north;  
Meridian 51° 35' 26" east.

It extends from this point in a straight line proceeding in a south-easterly direc-  
tion to point (c) at the geographical location of:

Parallel 26° 56' 09" north;  
Meridian 52° 34' 52" east.

It extends from this point in a straight line proceeding east by south to point (d)  
at the geographical location of:

Parallel 22° 37' 41" north;  
Meridian 55° 08' 14" east.

<sup>1</sup> Came into force on 21 August 1974 by signature, in accordance with article 9.



The boundary extends from this point in a straight line proceeding in a north-easterly direction, leaving Umm al-Zumul to the east of point (e) at the geographical location of:

Parallel 22° 42' 02" north;  
Meridian 55° 12' 10" east.

The boundary extends from point (e) in straight lines joining the points at the following geographical locations:

Point	Parallel - north	Meridian - east
f	23° 32' 11"	55° 30' 00"
g	24° 00' 00"	55° 34' 10"
h	24° 01' 00"	55° 51' 00"
i	24° 13' 00"	55° 54' 00"
j	24° 11' 50"	55° 50' 00"

From point (j), the boundary extends to point (k) at the approximate geographical location of 24° 13' 45" north and 55° 45' east, and from point (k) the boundary extends to point (l) at the geographical location of 24° 19' north and 55° 50' east, so that the three villages located to the east of point (k) are left inside the territory of the Kingdom of Saudi Arabia. From point (l), the boundary extends to the intersection of the boundaries of the Kingdom of Saudi Arabia, the United Arab Emirates and the Sultanate of Oman, on which agreement shall be reached by the three States.

All of the aforesaid points are shown in a preliminary manner on a map<sup>1</sup> on the 1:500,000 scale annexed to this Agreement and signed by the two High Contracting Parties.

#### Article 3

1. All hydrocarbons in the Shaybah-Zarrarah field shall be considered as belonging to the Kingdom of Saudi Arabia.

2. The United Arab Emirates agree and undertakes not to engage in or to permit any exploration or drilling for or exploitation of hydrocarbons in that part of the Shaybah-Zarrarah field lying to the north of the boundary line.

3. The Kingdom of Saudi Arabia or any company or corporation operating with its permission may engage in exploration and drilling for and exploitation of hydrocarbons in that part of the Shaybah-Zarrarah field lying to the north of the boundary line, and the two States shall subsequently reach agreement on the manner in which the Kingdom of Saudi Arabia shall engage in such activities.

#### Article 4

The Kingdom of Saudi Arabia and the United Arab Emirates each undertake to refrain from engaging in and from permitting the exploitation of hydrocarbons in that part of its territory to which the hydrocarbon fields primarily located in the territory of the other State extend.

<sup>1</sup> The annexed map referred to in article 2 does not form an integral part of the Agreement (information supplied by the Government of the Kingdom of Saudi Arabia).



*Article 5*

1. The United Arab Emirates recognizes the sovereignty of the Kingdom of Saudi Arabia over Huwaysat island, and the Kingdom of Saudi Arabia recognizes the sovereignty of the United Arab Emirates over all the other islands opposite its coast on the Arabian Gulf.

2. The United Arab Emirates agrees to the construction by the Kingdom of Saudi Arabia on the islands of Al-Qaffay and Makasib of any general installations it may wish to establish thereon.

3. Representatives of the High Contracting Parties shall, as soon as possible, delimit the offshore boundaries between the territory of the Kingdom of Saudi Arabia and the territory of the United Arab Emirates and between all of the islands subject to the sovereignty of each of them. They shall do so on such a basis of equity as will ensure free and direct access to the high seas from the territorial waters of that part of the territory of the Kingdom of Saudi Arabia adjacent to the territory of the United Arab Emirates and from the territorial waters of Huwaysat island, mentioned in paragraph 1 above, and in such a manner as to take account of suitability for deep-water navigation between the high seas and that part of the territory of the Kingdom of Saudi Arabia indicated above. The High Contracting Parties shall have joint sovereignty over the entire area linking the territorial waters of the Kingdom of Saudi Arabia and the high seas, in accordance with the provisions of this paragraph.

*Article 6*

A duly qualified international company to be selected by the two countries shall survey and delimit on the ground the boundary points and boundary lines set forth in article 2 above and prepare a map<sup>1</sup> of the land boundaries between the two countries and other related data. This map, after signature by the representatives of the High Contracting Parties, shall be the official map showing the desired boundaries and shall be annexed to this Agreement as an integral part thereof.

*Article 7*

A joint technical commission shall be formed of three members from each of the two countries to prepare specifications for the work required of the aforesaid company, to establish the boundary points and boundary lines between the two countries in accordance with the provisions of this Agreement and to supervise the implementation of the work and examine its results.

*Article 8*

This Agreement was drawn up in two copies in the Arabic language, one copy to be retained by each State.

*Article 9*

This Agreement shall enter into force immediately on signature.

<sup>1</sup> Not reproduced herein for technical reasons.

*Article 10*

DONE at Jeddah, in the Kingdom of Saudi Arabia, on 3 Sha'ban A.H. 1394, corresponding to 21 August A.D. 1974.

ZAYED BIN SULTAN AL NAHYAN  
President of the United Arab Emirates

FAISAL BIN ABDUL-AZIZ AL SAUD  
King of Saudi Arabia

## EXCHANGE OF LETTERS

## I

Jeddah, 3 Sha'ban A.H. 1394,  
corresponding to 21 August A.D. 1974

Your Highness,

I have the honour to refer to article 5, paragraph 3, of the Agreement delimiting the boundaries between our two countries signed on 3 Sha'ban A.H. 1394, corresponding to 21 August 1974.

I should like to convey to Your Highness that the understanding of the Kingdom of Saudi Arabia of "joint sovereignty over the entire area linking the territorial waters of the Kingdom of Saudi Arabia and the high seas, in accordance with the provisions of this paragraph" does not extend to ownership of the natural resources of the seabed and subsoil, inasmuch as these resources continue to be owned by the United Arab Emirates alone as an exception to the rights of joint sovereignty.

Should the understanding of the Kingdom of Saudi Arabia in this regard accord with that of the United Arab Emirates, I propose that this letter and the reply of Your Highness thereto should constitute an agreement establishing that fact and should be annexed to the aforesaid Agreement.

Accept, Your Highness, the assurances of our highest consideration and most sincere esteem.

FAISAL BIN ABDUL-AZIZ AL SAUD  
King of Saudi Arabia

His Highness  
Sheikh Zayed Bin Sultan Al Nahyan  
President of the United Arab Emirates

## EXCHANGE OF LETTERS

## I

Jeddah, 3 Sha'ban A.H. 1394,  
corresponding to 21 August A.D. 1974

Your Highness,

I have the honour to refer to article 5, paragraph 3, of the Agreement delimiting the boundaries between our two countries signed on 3 Sha'ban A.H. 1394, corresponding to 21 August 1974.

I should like to convey to Your Highness that the understanding of the Kingdom of Saudi Arabia of "joint sovereignty over the entire area linking the territorial waters of the Kingdom of Saudi Arabia and the high seas, in accordance with the provisions of this paragraph" does not extend to ownership of the natural resources of the seabed and subsoil, inasmuch as these resources continue to be owned by the United Arab Emirates alone as an exception to the rights of joint sovereignty.

Should the understanding of the Kingdom of Saudi Arabia in this regard accord with that of the United Arab Emirates, I propose that this letter and the reply of Your Highness thereto should constitute an agreement establishing that fact and should be annexed to the aforesaid Agreement.

Accept, Your Highness, the assurances of our highest consideration and most sincere esteem.

FAISAL BIN ABDUL-AZIZ AL SAUD  
King of Saudi Arabia

His Highness

Sheikh Zayed Bin Sultan Al Nahyan  
President of the United Arab Emirates

## II

Jeddah, 3 Sha'ban A.H. 1394,  
corresponding to 21 August A.D. 1974

Your Majesty,

I have the honour to refer to Your Majesty's letter dated 3 Sha'ban A.H. 1394, corresponding to 21 August 1974, which reads as follows:

*[See letter I]*

I have the honour to inform Your Majesty that the understanding of the United Arab Emirates with regard to the ownership of the natural resources indicated in Your Majesty's letter is in accord with the understanding of the Kingdom of Saudi Arabia.

Accept, Your Majesty, the assurances of our highest consideration and most sincere esteem.

ZAYED BIN SULTAN AL NAHYAN  
President of the United Arab Emirates

His Majesty  
King Faisal Bin Abdul-Aziz Al Saud  
King of Saudi Arabia

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1. Agreement between the Kingdom of Saudi Arabia and the State of Kuwait concerning the submerged area adjacent to the divided zone<sup>4</sup>

In the Name of God, the Merciful, the Compassionate

Agreement between the Kingdom of Saudi Arabia and the State of Kuwait concerning the submerged area adjacent to the divided zone.

Strengthening and reinforcing the ties of faith and brotherhood between the fraternal peoples of the State of Kuwait and the Kingdom of Saudi Arabia;

Affirming the unshakeable and deeply rooted relationship and bonds of love and affection between the two fraternal countries;

In view of the desire of the Custodian of the Two Holy Mosques, King Fahd Bin Abdul-Aziz Al Saud, King of Saudi Arabia, and his brother His Highness Sheikh Jaber Al-Ahmad Al-Jaber Al-Sabah, Amir of the State of Kuwait, to determine the line dividing the submerged area adjacent to the divided zone in a manner that will serve the interests of the two fraternal countries and respect their regional rights, and pursuant to the Agreement on the partition of the neutral zone between the two countries signed on 9 Rabi' I A.H. 1385 (7 July A.D. 1965) (hereinafter referred to as the divided zone) and the Agreement concerning the designation of the median line of that neutral zone between the two countries signed on 9 Shawwal A.H. 1389 (18 December A.D. 1969),

The two fraternal countries have agreed as follows:

Article 1

1. The line dividing the submerged area adjacent to the divided zone, which represents the border between the two countries, begins on the coast at point G at geographical coordinates 28° 32' 02.488" north and 48° 25' 59.019" east and passes through four points with the following geographical coordinates:

Point	Latitude north	Longitude east
1	28° 38' 20"	48° 35' 22"
2	28° 39' 56"	48° 39' 50"
3	28° 41' 49"	48° 41' 18"
4	28° 56' 06"	49° 26' 42"

From Point 4, the line dividing the submerged area adjacent to the divided zone continues in an easterly direction.

2. The provisions of paragraph 1 of this article do not prejudice the provisions of Annex 1 to this Agreement.

<sup>4</sup> Translated from Arabic. Original text communicated by the Permanent Mission of Saudi Arabia to the United Nations on 27 October 2000. Registered: 29 March 2001, No. 37359.

Article 2

The northernmost limit of the submerged area adjacent to the divided zone, beginning on the coast at point No. 1, at geographical coordinates 28° 49' 58.7" north and 48° 17' 00.188" east, shall be determined on the basis of the principle of equal distance from the low-water mark. With due regard for the provisions of article 8 of the Agreement on the partition of the neutral zone, the islands, shoals and reefs shall have no effect on this limit.

Article 3

The northernmost limit fixed in accordance with article 2 of this Agreement shall be amended by taking fully into account the Faylakah group of islands, while not prejudicing the provisions of Annex 1 to this Agreement.

Article 4

The southernmost limit of the submerged area adjacent to the divided zone shall be the line between the two countries currently in use, which starts at point No. 5 on the coast, at geographical coordinates 28° 14' 05.556" north and 48° 36' 06.916" east.

Article 5

The agreement between the two Contracting States concerning ownership of the natural resources in the submerged area adjacent to the divided zone is contained in Annex 1 of this Agreement, of which it is an integral part.

Article 6

The company commissioned by the two countries to survey and prepare maps of the submerged area adjacent to the divided zone shall determine the coordinates of the northernmost limit in accordance with articles 2 and 3 of this Agreement and prepare the maps in their final form. Those maps shall be signed by the representatives of both countries and considered an integral part of this Agreement.

Article 7

The Kingdom of Saudi Arabia and the State of Kuwait shall be considered as a single negotiating party with regard to the designation of the eastern limit of the submerged area adjacent to the divided zone.

Article 8

The competent authorities in each country shall agree upon the measures and arrangements concerning recreational fishing in the submerged area adjacent to the divided zone.

Article 9

The provisions of this Agreement do not prejudice the provisions of the Agreement on the partition of the neutral zone between the two countries signed on 9 Rabi' 1 A.H. 1385 (7 July A.D. 1965) or of the Agreement concerning the designation of the mid-point of that neutral zone between the two countries signed on 9 Shawwal A.H. 1389 (18 December A.D. 1969).



Article 10

This Agreement shall be subject to ratification by both countries and shall enter into force from the date on which the instruments of ratification are exchanged.

DONE in the city of Kuwait in two original copies on the thirty-first day of the month of Rabi'I in year A.H. 1421 (2 July A.D 2000).

On behalf of the Kingdom of Saudi Arabia

Saud Al-Faisal

Minister for Foreign Affairs

On behalf of the State of Kuwait

Sabah Al-Ahmad Al-Jaber Al-Sabah

First Deputy Prime Minister and

Minister for Foreign Affairs

In the Name of God, the Merciful, the Compassionate

Annex 1

Agreement between the Kingdom of Saudi Arabia and the State of Kuwait  
concerning the submerged area adjacent to the divided zone

The two countries have agreed that the natural resources in the submerged area adjacent to the divided zone shall be owned in common. Those resources shall include the islands of Qaruh and Umm al-Maradim and the area lying between the northernmost limit referred to in article 2 of the Agreement and the northernmost limit as amended in accordance with article 3 of the Agreement.

On behalf of the Kingdom of Saudi Arabia

Saud Al-Faisal

Minister for Foreign Affairs

On behalf of the State of Kuwait

Sabah Al-Ahmad Al-Jaber Al-Sabah

First Deputy Prime Minister and

Minister for Foreign Affairs





# 1. Saudi Arabia and Qatar

*Joint Minutes of on the land and maritime boundaries to the Agreement of 4 December 1965 between the State of Qatar and the Kingdom of Saudi Arabia on the delimitation of the offshore and land boundaries, 5 July 2008<sup>1</sup>*

Prompted by the directives of the Custodian of the Two Holy Mosques King Abdullah bin Abdulaziz Al-Saud, the King of the Kingdom of Saudi Arabia and his brother His Highness Sheikh Hamad bin Khalifa Al-Thani, the Amir of the State of Qatar to strengthen and enhance the brotherly relations, bonding the two countries, in different fields;

Based on the Land and Maritime Border Delimitation Agreement concluded between the Kingdom of Saudi Arabia and the State of Qatar, dated 11/8/1385H, corresponding to 4/12/1965, and the minutes of the meeting held between the foreign ministers of the two countries dated 26/12/1421H, corresponding to 21/3/2001;

In continuation to what had been discussed during the visit of His Royal Highness Prince Sultan bin Abdulaziz Al-Saud, Crown Prince, Deputy Premier, Minister of Defense and Aviation and Inspector General of the Kingdom of Saudi Arabia to the State of Qatar during 2-4 /3/1429H, corresponding to 10-12/3/2008, concerning the desire of the two countries to finalize the delimitation of the maritime borders between them beyond Khawr Al-Udaid and the effects thereof;

A meeting was held in Jeddah on 27/6/1429H, corresponding to 2/7/2008, between His Royal Highness Prince Sultan bin Abdulaziz Al-Saud, Crown Prince, Deputy Premier, Minister of Defense and Aviation and Inspector General of the Kingdom of Saudi Arabia and his brother His Excellency Sheikh Hamad bin Jassim bin Jabr Al-Thani, Prime Minister and Minister of Foreign Affairs of the State of Qatar. His Royal Highness Prince Nayef bin Abdulaziz, Minister of Interior of the Kingdom of Saudi Arabia also held a meeting with His Excellency the Prime Minister of the State of Qatar, who also made another visit to the Kingdom on 2/7/1429H, corresponding to 5/7/2008, during which he held a meeting with His Royal Highness Prince Nayef bin Abdulaziz.

The Two Parties have agreed to the following:

*First:* Completing the delimitation of the maritime borders between the Kingdom of Saudi Arabia and the State of Qatar beyond Khawr Al-Udaid and the effects thereof, so that the maritime borders between the two countries be in accordance with the attached maritime map and the following coordinates:

Serial	North	East
1	24 37 47	51 24 21
2	24 38 17	51 26 08
3	24 43 08	51 35 00
4	24 52 05	52 15 54
5	24 53 30	52 18 20
6	25 02 05	52 18 52

<sup>1</sup> Registered with the Secretariat of the United Nations on 19 March 2009. Registration number: A-30249. Entry into force: 16 December 2008.

7	25 02 00	52 28 05
8	25 08 17	52 34 56
9	25 34 27	53 00 45

A technical team from both countries shall ascertain that the above-mentioned maritime geographical coordinates shown in serial numbers (3-9) are three nautical miles away from the coordinates specified in Paragraph (Second) of these Minutes.

*Second.* As for natural resources under the seabed in the sea area whose southern limits are identified by the following geographical coordinates:

Serial	North	East
1	25 31 50	53 02 05
2	25 05 54,79	52 36 50,98
3	24 48 40	52 16 20
4	24 38 20	51 28 05

It has been agreed that the ownership of these resources shall belong to the State of Qatar, and the competent Qatari authorities shall be enabled to protect their oil wells and facilities in such area.

*Third:* If ships are not able to sail through the sea area specified in Paragraph (First), the Qatari authorities - through the Joint Technical Committee- shall enable said ships to depart and arrive to the Saudi port and then to the open sea, provided that the Technical Committee designate the necessary sea lanes.

*Fourth:* In addition to what has been demarcated in accordance with the Land and Maritime Border Delimitation Agreement between the two countries, the State of Qatar shall have a coast line starting from Border Point (H) and extending parallel to the coast south of Khawr Al-Udaid in accordance with the attached land map and the following coordinates:

Serial	Northern	Eastern
1	Point H 2706390,269	509992,989
2	2708000	531800
3	2712000	537000
4	2720400	541900
5	2723525	540670

*Fifth:* The Saudi-Qatari Joint Committee formed pursuant to Article (5) of the Land and Maritime Border Delimitation Agreement between the two countries shall be assigned to place border markers in accordance with the attached land map and the coordinates outlined in Paragraph (Fourth) above as soon as possible.

*Sixth:* What has been agreed upon in these Minutes and the two attached maps shall constitute a final agreement on land and Maritime borders between the two countries.

*Seventh:* These Minutes and the two maps signed by the Two Parties along with these Minutes shall complement the Land and Maritime Border Delimitation Agreement between the Kingdom of Saudi Arabia and the State of Qatar, signed on 11/8/1385H, corresponding to 4/12/1965, and shall be deemed an integral part thereof.







